The Solicitors' Journal

VOL. LXXXII. **Saturday, December 31, 1938.** No. 53

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

The Commercial Court.

THIS tribunal, which is often regarded as a separate entity in the legal sphere, but is really only one of the various branches of the King's Bench Division, was designed for the speedy determination of commercial cases, and is really of comparatively recent institution. Lord Chief Justice COLERIDGE, in whose regime it was set on foot, looked coldly upon it, taking the view that there was nothing peculiar about mercantile litigation calling for any special qualifications on the part of the judge before whom cases of this kind might come. The commercial world did not share this optimistic view of judicial knowledge, and when one or two cases with a commercial flavour came before a certain judge, and he betrayed such a pitiful lack of knowledge of even the most elementary principles of mercantile law, being unaware, for example, of the difference between a charter party and a bill of lading, it was not in the least surprising that city merchants fought shy of submitting their disputes to a court presided over by a judge so totally unfamiliar with even the rudiments of commercial law and documents. It then came to be realised that if city merchants were to be wooed back to the courts instead of submitting their difficulties to arbitrators, the courts must make provision for them by providing a judge or judges who knew intimately the law relating to business questions, especially those relating to shipping and insurance; accordingly Mr. Justice MATHEW was installed as the first judge of the Commercial Court. It was a happy choice, and under his presidency the court proved an immense success. The judge was familiar with the class of litigation with which he had to deal: he discouraged prolixity in pleadings and in speech, and all this made for rapidity in the disposal of the work. To the court when he was the judge were attached such eminent advocates as JOSEPH WALTON, J. A. HAMILTON and T. E. SCRUTTON, each of whom was destined in turn to occupy the seat which had been occupied by Mr. Justice MATHEW till he was moved up to the Court of Appeal. More recently a sense of disappointment has been felt in connection with the court, especially in the lack of continuity with the judges taking the work in it. To meet this criticism it has now been arranged that great judicial continuity will be ensured, and in this way a renewed popularity with the business world regained. It would be a matter greatly to be deplored if the Commercial Court which in the past has done such excellent service to the mercantile community should in any way fall short of the high degree of utility it reached under Mr. Justice MATHEW.

Chancery Division: Rearrangement of Business.

THE reduction of the number of judges in the Chancery Division of the High Court of Justice to five has led to a rearrangement of business which will take effect from the beginning of next term. The distinction between long and short witness actions will be abolished and the judges will be divided into two groups of two each, the senior judge being attached to neither. In each term one judge from each group will take witness actions, and one judge from each group the non-witness list, while the senior judge will deal with witness and non-witness work as occasion requires. Group A consists of BENNETT and SIMONDS, JJ., Group B, of CROSSMAN and MORTON, JJ. BENNETT, CROSSMAN and SIMONDS, JJ., will continue to deal with the company work, and FARWELL and MORTON, JJ., with the bankruptcy work. The Manchester and Liverpool work will be dealt with by the two judges in Group A. The Chancery Chambers hitherto attached to BENNETT, CROSSMAN and SIMONDS, JJ., will be the chambers attached to Group A. The Chancery Chambers hitherto attached to FARWELL and MORTON, JJ., will be the chambers attached to Group B. From 1st January, 1939, the Chief Master (Master HOLLAND) will be attached to all the judges and will deal with all applications made under the Adoption of Children Act, 1926, all applications as to removals and appeals from the county court under s. 10 of the Guardianship of Infants Act, 1886, and application for transfer of causes or matters from one judge of the Chancery Division to another under Ord. 49, r. 1A. Masters HOLLOWAY, WILLMOTT, JELF and TREHEARNE will be attached to the chambers of the judges in Group A; while Masters NEWMAN, HOLLAND, HAWKINS and MOSSE will be attached to the chambers of the judges in Group B. The matters which will come before each master are indicated in the notice set out on p. 1055 of the present issue and need not be particularised here. The arrangement of the work

between the learned judges next term is as follows: FARWELL, J., at the beginning, will deal with witness actions; BENNETT and CROSSMAN, JJ., will take the non-witness work; and SIMONDS and MORTON, JJ., will take witness actions.

The Law of Libel.

WE recently alluded in these columns to the Law of Libel (Amendment) Bill, which seeks to amend the law relating to libel and slander in various ways, particularly with a view to discouraging speculative actions. The text of the measure is now available and it may be convenient to give a fuller indication of its contents than was possible on the former occasion. It is proposed to limit the liability of writers, publishers, and any other defendants in actions for libel to cases where there has been wrongful intent or negligence. Under the Bill the liability of newsagents, booksellers and the like, who distribute publications which happen to contain libels, is limited to cases where the publication is known to contain the libel, or is known, or ought to be known, to be of a character likely to contain a libel. The Bill also provides that a plaintiff in an action for libel or slander shall not be entitled to recover damages unless he gives oral evidence that his reputation has suffered or may suffer: and that a plaintiff shall not recover more costs than damages, unless the judge makes an order to the contrary. The protection afforded by s. 4 of the Law of Libel Amendment Act, 1888, is sought to be extended to "newspaper reports of all proceedings, such as those of tribunals under various modern statutes, to which the public are admitted and to copies of documents to which the public have access, when such reports are in the public interest," and also to newspaper reports of proceedings of public meetings, including the meetings of public companies. The Bill also seeks to abolish the distinction between written and spoken defamation as regards the necessity of proving special damage. It has been emphasised that the measure is not designed in any way to weaken the protection which the law of libel at present properly affords, and that it is not merely a newspaper Bill, its purpose being to give to all who are concerned with writing and publishing, including authors, reasonable protection against those who bring frivolous libel actions in the hope of obtaining some damages, although they are in no position to pay the costs if their actions fail. The Bill has been put down for second reading in the House of Commons on 3rd February.

Newspaper Shares.

BRIEF mention should be made of a short Bill which was introduced in the House of Commons on 13th December. The measure, which would be known as the Companies Act (1929) Amendment Act, 1938, provides for the amendment of s. 68 of the Companies Act, 1929, by the insertion of a clause to the effect that in the case of news agencies, newspapers and periodicals it shall be illegal for shares of any description to be registered in the names of nominees, or otherwise than in the names of the actual shareholders. Liability on conviction to a penalty of not less than £10 for each pound's worth of shares incorrectly registered is prescribed for failure to comply with the provision. Captain RAMSAY stated that the object of the Bill was to prevent the manipulation and control of "news" for their own ends—he made no charges, but the Bill was to eliminate the risk if there was one—by big finance, whether the group consisted of British, foreign or international financiers. He emphasised that the Bill was not discriminatory in any way. It was confined to the report of the news in its various forms because the mishandling of news could be used in two ways, both gravely affecting the public welfare—financial and political. The public, he urged, had a right to know who controlled the presentation of news and what influences were at work behind it. The motion for leave to introduce the Bill was carried by a majority of 151 to 104.

The Housing (Rural Workers) Acts.

RECENT figures concerning the operation of the Housing (Rural Workers) Acts show a gratifying increase in the number of applications for assistance. During the quarter ended 30th September the number of applications reached the hitherto unprecedented figure of 2,410. The number of applications granted during the same period was 1,160, and this was also a record. Corresponding figures for the same quarter of 1937 were 1,349 and 1,004 respectively. It is stated that the Acts have now enabled 20,321 cottages in England and Wales to be re-conditioned by the owners. The total for Scotland, published some time ago, was 27,639, but there seems to have been recently a considerable falling off in the number of applications received by local authorities over the Border. The recent increase in this country may well be attributed to the increased facilities in this direction provided by the Housing (Rural Workers) Amendment Act, 1938, and to the means taken by the Ministry of Health to bring to the notice of owners the advantages which the Acts offer by systematic distribution of the booklet—to which reference has been made in these columns—entitled "New Homes for Old." Whatever be the cause, the increased activity in this direction, which secures at once the adequate housing of the agricultural worker and the preservation of the amenities of the countryside, is matter for satisfaction.

The Coal (Valuation Procedure) Rules, 1938.

ON 14th December the Special Orders Committee of the House of Lords decided to report that the draft Coal (Valuation Procedure) Rules, 1938, could not be passed by the House without special attention, but that there was no need for further inquiry before the House proceeded to a decision on the resolution to approve the rules. Paragraph 14 of the Third Schedule to the Coal Act, 1938, empowers the Central Valuation Board to make, with the approval of the Board of Trade, rules for purposes in connection with paras. 11, 12 and 13, which embrace the procedure to be followed by the Regional Valuation Boards, and requires a draft of the rules so made to be submitted for approval by each House of Parliament. Objections were taken to the rules at the meeting just referred to, which LORD MAUGHAM, L.C., said was due to a misapprehension. The rules, it was intimated, only required certain information to be furnished which might be of use to the valuation boards when they started the valuation, and it was a complete mistake to suppose that a request in the rules for information had any effect upon the true construction of the Coal Act which bound the valuers. All that the rules required was that estimates as to the amount of coal royalties receivable in 1942 and at subsequent dates should be given. They were necessary and proper for the purpose of assisting the valuers to ascertain the values of the various holdings, and to say that they were *ultra vires* was in the nature of a mare's nest. The point of construction was alluded to by the EARL OF MUNSTER, the Paymaster-General, when the draft rules were before the House of Lords on the following Tuesday. The question, it was intimated, turned upon the interpretation of the first part of s. 7 (4) of the Coal Act, which provides: "The value of a holding shall be taken to be the amount which the holding might have been expected to realise if this Act had not been passed and the holding had been sold on the valuation date in the open market by the existing owners thereof, selling as willing vendors to a willing purchaser, under a contract providing for completion thereof on the vesting date . . ." The interpretation adopted for the purpose of the rules was that the purchaser must consider as on the valuation date what the property would be worth on the vesting date. On the other hand, the view had been submitted that the proper value was at the valuation date without taking any account of the fact that the property did not pass for three and a half years. The latter view, it was urged, was untenable as a matter of

construction, since it gave no meaning to the last phrase in the above cited portion of the Act, while such an interpretation would give quite artificial results. The motion that the special order, as reported from the committee, be approved was agreed to, and a resolution approving the draft rules was passed in the House of Commons on the same day.

Local Government Superannuation Act, 1937: Minister's Decisions.

FURTHER decisions of the Minister of Health under the Local Government Superannuation Act, 1937, and the Local Government Superannuation (Administration) Rules, 1938, may be shortly noted as follows: A Superannuation Joint Committee under Art. 6 (3) of the Regulations appealed against a decision of a Joint Hospital Board to the effect that certain probationer nurses would not, if they remained in the posts then occupied, become contributory employees within the meaning of the Act. On appointment the nurses were required to enter into an agreement for service for a period of two years which would not, in regard to them, terminate until after 1st April, 1939. The Minister dismissed the appeal on the ground that the terms of the appointments did not in any way provide for the continuation of the employment for more than two years, and that the provisions of s. 50 (1) of the Act applied. Another case was that of an inspector in the water department of a local authority who appealed on the ground that a period of previous employment with a water company had not been reckoned as service for the purposes of the Act. The appellant entered the service of the corporation in 1919. In 1920 the undertaking of the water company was transferred under a local Act to a water board which, by a local Act of 1934, was empowered in the event of its adopting the Local Government and other Officers' Superannuation Act, 1922, to recognise for the purposes of that Act previous service of any of their employees with the company. The employee contended that the same right should extend to him. The Minister intimated that the powers conferred on the water board by the Act of 1934 were limited to employees in the service of the board when the Act of 1922 was adopted and could not be applied to the case of the appellant whose appeal, having regard to the definition of "local authority" and "service" in s. 40 (1) of the Act of 1937, was dismissed.

Recent Decisions.

IN *Attorney-General* v. *Canter* (*The Times*, 20th December,), the Court of Appeal (Sir WILFRID GREENE, M.R., and FINLAY and LUXMOORE, L.JJ.) upheld a decision of LAWRENCE, J., to the effect that s. 1 of the Law Reform (Miscellaneous Provisions) Act, 1934, applied to a claim by the Crown founded on s. 30 (1) of the Income Tax Act, 1918, and that proceedings commenced after the taxpayer's death for the recovery of the penalties and treble tax on his income from all sources for the years in question, liability in respect of which was subsisting at the date of the taxpayer's death, did not constitute a cause of action in tort within s. 1 (3) of the above-named Act. Judgment for the Crown was accordingly affirmed.

In *Dann* v. *Hamilton* (*The Times*, 20th December), ASQUITH, J., held that the maxim *volenti non fit injuria* did not apply to one who embarked in a car with knowledge that the driver, through drink, had materially reduced his capacity for driving safely, and the learned judge accordingly awarded damages to the plaintiff in respect of personal injuries sustained owing to the negligent driving of the defendant's husband, who was killed as a result of the accident in which the plaintiff was injured.

In *Lovell* v. *Williams* (*The Times*, 20th December), the Court of Appeal (SCOTT, MACKINNON and DU PARCQ, L.JJ.) reversed a decision of MACNAGHTEN, J., who had directed all further proceedings to be stayed in an action by one whose claim for personal injuries arising out of a road accident had been settled in the county court and who claimed the right to bring an action in the High Court in respect of more serious injuries arising out of the same accident from which he alleged he was subsequently found to be suffering. The Court of Appeal intimated that, since such an action did not obviously amount to an abuse of the process of the court, the order appealed from was wrong.

In *Journeaux and Another* v. *Piccadilly Hotel, Ltd.* (*The Times*, 20th December), STABLE, J., negatived a claim for damages for alleged negligence and breach of duty in supplying food, which the plaintiffs said was not fit for human consumption, on the ground that the plaintiffs had not adduced any evidence to show that the defendants had failed to take reasonable precautions. The learned judge observed that the defendants had taken every reasonable precaution, and that the plaintiffs had not satisfied him that there was anything at all the matter with the food supplied.

In *Chisholm* v. *London Passenger Transport Board* (p. 1050 of this issue) the Court of Appeal (SCOTT and MACKINNON, L.JJ., DU PARCQ, L.J., dissenting) reversed a decision of HILBERY, J., (82 SOL. J. 396), and held that a boy aged 15 years, suing by his father, was not in a position to recover damages in respect of injuries by being knocked down on a pedestrian crossing by an omnibus driven by a servant of the defendants. *Bailey* v. *Geddes* [1935] 1 K.B. 156, which was not concerned with the duty of the pedestrian still on the footway not to embarrass approaching traffic by suddenly stepping on to a pedestrian crossing, distinguished.

In *Kearey* v. *Pattinson* (p. 1050 of this issue) the Court of Appeal (SLESSER, CLAUSON and GODDARD, L.JJ.) upheld a decision of a county court judge to the effect that the defendant had not committed any actionable wrong by refusing to allow the plaintiff to enter the defendant's land for the purpose of recovering a swarm of bees. Bees were *ferræ naturæ*, and the qualified property which the plaintiff had in them when hived was lost when they swarmed in a place to which he had no right to follow them.

In *Re an Application by Sherwood Colliery Co., Ltd.* (*The Times*, 21st December), the Railway and Canal Commission (WROTTESLEY, J., Sir FRANCIS TAYLOR, K.C., and Sir FRANCIS DUNNELL) granted an application for the right to work certain coal and for ancillary rights in connection therewith, and declined to accede to the request of the Coal Commission that a minimum rent should be reserved from 1st July, 1942 (the vesting date under the Coal Act, 1938), and that an obligation should be imposed on the applicants within ten years to sink further shafts to enable coal in the lower seams, the subject of the application, to be properly developed. It was intimated that in this and all other cases now before the court the liberty to apply would extend to the Coal Commission.

In *Swettenham (Sir) F. H.* v. *Swettenham (Lady), C. S.* (*The Times*, 22nd December), HENN COLLINS, J., confirmed the Registrar's report as to the maintenance to be provided under s. 10 (2) of the Matrimonial Causes Act, 1937, by a husband who had obtained a decree of divorce on the ground of his wife's incurable unsoundness of mind. The report provided *inter alia* that a stated amount of the capital of the wife (who was nearly eighty) should be expended on an annuity for her, and the learned judge held that the court had power to make such an order having regard to the words of the Supreme Court of Judicature (Consolidation) Act, 1925, s. 190.

Land Registration.

THE attention of readers is drawn to the fact that on and after 1st January, 1939, registration of title to land in the County Borough of Croydon will be compulsory on sale. The order whereby compulsory registration in the area named is to be introduced is set out on p. 1055 of the present issue.

"Sale or Return."

An interesting question of construction in connection with s. 18, r. 4, of the Sale of Goods Act, 1893, was raised in the case of *Nelthorpe* v. *V. A. and J. A. Tooth* (*a firm*) before Mr. Justice Greaves-Lord, on 14th and 16th November.

On 20th July, 1938, the defendants, picture dealers, received from the plaintiff some pictures, under a memorandum which said the pictures were handed over "on sale or return within seven days, at the following prices . . ." and then followed a list of the pictures with prices marked opposite them. On 27th July the plaintiff extended the time, by letter, to 4th August. On 3rd August the defendants' servant, a clerk, wrote to the plaintiff as follows: "It was Mr. Tooth's intention to return your pictures to you to-day, but unfortunately he was taken ill with pleurisy over the week-end and will not be back at the office for at least three weeks. As his brother, Mr. Jack Tooth, is away in Ireland until the end of next week it will be impossible for the pictures to be returned by road until then, so perhaps you would let me know if you would prefer to have them returned by rail." The plaintiff replied that he had no objection to the pictures being returned by rail and requested that this should be done immediately. On receiving neither a reply nor the pictures, the plaintiff, on 10th August, demanded payment, claiming that the defendants had bought the pictures at the prices named in the memorandum of 20th July.

The dispute turned on the meaning of s. 18, r. 4 (*b*), of the Sale of Goods Act, which reads as follows: "When goods are delivered on approval or 'on sale or return' or other similar terms, the property therein passes to the buyer . . . (*b*) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time." All the rules of the section are expressed as the rules for determining the intention of the parties unless a different intention appears from the contract.

Ever since the Act was passed there has been some doubt as to the effect of the words "without giving notice of rejection" in this part of s. 18. Before the Act the law was fairly clear, from the decision in *Moss* v. *Sweet* (1851), 16 Q.B. 493. In that case all the judges (Lord Campbell, C.J., Patteson, J., Coleridge, J., and Wightman, J.) were of the opinion that where goods were delivered "on sale or return" the transaction became a sale *unless the goods were actually returned* within a reasonable time (provided no time was fixed in the contract), and Coleridge, J., cited *Bailey* v. *Gouldsmith*, Peake, N.P. 78, and *Beverley* v. *Lincoln Gas, Light and Coke Co.*, 6 Ad. and E. 829, in support of this opinion.

The Sale of Goods Act, by using the words "without giving notice of rejection" in this section, appeared to have altered the law. "Benjamin on Sale" (7th ed.) says: "It seems that under the Act the buyer may prevent the passing of the property by merely giving notice of rejection *without sending the goods back*" (the italics are the writer's). The defendants' case, in *Nelthorpe* v. *Tooth*, was based on this contention. It was argued that their letter of 3rd August was a clear notice of rejection of the pictures and that therefore they had done all that they needed to do to prevent property in them passing to themselves: there was no sale and the plaintiff's action was misconceived and should have been in detinue for damages against the defendants for retaining the pictures.

Counsel for the plaintiff referred to *Ornstein* v. *Alexandra Furnishing Co* (1895), 12 T.L.R. 128, and claimed that the return of the pictures would have been the only way of preventing property passing. But the judgment there appears to have been based upon special provisions of the contract. Collins, J., said that "s. 18 . . . began with the limitation 'unless a different intention appears.' The rules contained in s. 18 were merely *primâ facie* rules, subject to the provisions of the main enactment. Under the special terms of this contract the defendants could only exercise the arbitrary right of refusing the goods by their refusal taking the shape of an actual return of the goods within a reasonable time" (at p. 128).

While judgment in that case was given for the plaintiff on these grounds, Collins, J., did appear to take the view that s. 18 had altered the law, and, in the absence of special provisions in the contract, mere notice of rejection would be sufficient to prevent property passing, and Mr. Justice Greaves-Lord, in *Nelthorpe* v. *Tooth*, took the same view. He held, however, that although the letter of 3rd August indicated some intention on the part of the defendants to return the pictures it could not be taken as being a *genuine* notice to reject. In stating this conclusion he referred to the subsequent conduct of the defendants and their failure to return the pictures, after sending their letter of 3rd August, in spite of the plaintiff's request that they should be returned.

This decision appears to create an important modification of the rule indicated in *Ornstein* v. *Alexandra Furnishing Co.* and expressly stated in Benjamin. The mere use of words which can be construed as a notice of rejection of the goods is not sufficient to prevent property passing. All the circumstances of the buyer's conduct must be looked at to decide whether the notice is "genuine," and the fact that the goods are retained by the person giving the notice is a relevant factor in deciding whether it is or is not genuine.

Costs.

WITNESSES' ALLOWANCES—(*continued*).

We were discussing in our last article the allowances made to witnesses for attending the trial of an action and giving evidence on behalf of one of the parties.

We have already dealt with the question of fares and hotel expenses, about which there can be little argument, since these expenses are capable of exact proof, and all that remains is to determine the social status of the witness, and the mode of travel and living that is appropriate to that witness's particular stage of social elevation.

The sum to which a witness may be entitled in respect of his loss of time is, however, a matter involving many more difficulties. It is not a mere question of producing evidence that so much was paid to the witness in respect of this item, supported by a statement to the effect that that was the sum which the solicitor was forced to pay before the witness would consent to attend and give evidence. There is a complete answer to that suggestion in the words of Lord Sterndale in the case of *The Ibis VI* [1921] P. 255, where his lordship pointed out that a witness properly summoned to attend to give evidence is bound to attend on payment of conduct money and expenses. In short, there can be no such thing as a witness demanding adequate remuneration for serving in that capacity. Such service is a duty thrust on to all persons residing within the jurisdiction of the English courts, and they cannot bargain beforehand as to the remuneration that they are to receive, nor can they demand afterwards that they shall receive remuneration for their loss of time commensurate with the amount by which they are actually out of pocket.

It is, however, customary for the taxing masters to allow the witness something approaching his actual loss involved in attending to give evidence, but there is, in fact, no strict right to remuneration on that basis, and this is a point that is worth bearing in mind when the question of witnesses' allowances is being discussed. As Lord Sterndale again observed in *The Ibis VI*, *supra*, the rate of wages is not an absolute measure, although it may be a reliable guide.

In any event, the amount of compensation allowed to the witness will have to be calculated by reference to some specific loss, and he will not be allowed anything in respect of an unascertained item, such as the probable loss of business profits as a result of his having to attend to give evidence, see *Nokes* v. *Gibbon*, 5 W.R. 216. Nor, in a case where a person has to provide a substitute to carry on his business whilst he is away from it to give evidence, will the person necessarily recover the cost of that substitute.

This problem of substitutes does not often arise except in Admiralty actions, or actions involving the attendance of mercantile marine officers or seamen. In such cases the question does arise very frequently, and the broad effect of the decided cases on the point is that the cost of providing a substitute is not to be allowed as a matter of course. Nor, for that matter, can the expense of a substitute be dismissed simply on the ground that it *is* such an expense, for it would seem that the taxing master has discretion under sub-r. 9 of r. 27, Ord. 65, to allow "such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses." It may very well be that the engagement of a substitute to perform the duties of the witness whilst the latter is absent to give evidence is a just and reasonable proceeding for which the unsuccessful party must pay, and an argument along these lines would be the more effective if the witness whose attendance necessitated the employment of a substitute was an independent witness, that is, not an employee of the party calling him.

In the case of the "*Massilia*" [1926] P. 180, the expense of providing a substitute was not allowed by the Court, because, to quote from the judgment of Lord Merrivale, "It was an expense incurred because their salvage action was contested, but it was incident to the business of the company rather than to the proceedings in the cause. It more nearly approaches damages by litigation than expense of litigation." The witness there who necessitated the employment of a substitute was the master of the plaintiffs' vessel which performed the salvage, the subject-matter of the action. If, however, it was necessary to bring an *independent* witness from abroad, and counsel advised his being brought and the only conditions upon which the employers of that independent witness would permit him to attend was that a substitute be provided during the witness's absence, then it seems that the taxing master would be justified in allowing the cost of the substitute by virtue of sub-r. 9, *supra*.

That this course is possible is made clear from the further observations of Lord Merrivale in the "*Massilia*" *Case*, *supra*, when he observed that "I purposely refrain, however, from the expression of any opinion on the general question whether, and in what cases if at all, expenses of such substitutes may be recovered as part of the costs of litigation." As a general proposition, it may be said that the expenses of providing a substitute are not likely to be allowed in a case where the witness released is an employee of the party calling him. On the other hand, there is a possibility that if the witness for whom the substitute is found is an independent witness, then the cost of that substitute *may* be allowed. Again, however, it must be emphasised that if the witness is resident within the jurisdiction of the English courts and is properly summoned and is paid his conduct money, then the person is bound to attend to give evidence, however inconvenient it may be. Sub-rule 9, *supra*, does, however, leave the taxing master with a wide discretion to deal with such an item in a reasonable manner.

Company Law and Practice.

Some Cases on the Contractual Liability of a Receiver.

Not very long ago I had occasion to consider the effect of the appointment of a receiver on the current contracts of a company. I want in this article to consider a kindred topic, namely, the position of the receiver under contracts entered into by him in the course of his management of the affairs of the company. Receivers appointed by the court and receivers appointed under hand form for this purpose two different classes, and different considerations also arise according to whether the company is or is not in liquidation. The cases to which I shall refer are primarily concerned with the rights against the receiver of a person contracting with the receiver, but questions also arise as to rights against debenture-holders or debenture trustees who have appointed the receiver.

The first and simplest case is that of a receiver appointed under hand, the company being and continuing to be a going concern. The first thing to do in considering such a case is to look to see whether the debenture or debenture trust deed under which the appointment is made contains words declaring the receiver to be the agent of the company. This will usually be found to be the case, but even if the instrument contains no express provision to that effect the same result will be achieved if the provisions of the Law of Property Act, 1925, have been incorporated. Section 109 (2) of that Act provides that a receiver appointed under the powers conferred by the Act shall be deemed to be the agent of the mortgagor and that the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides. In nine cases out of ten, therefore, the receiver will be the agent of the company and his position will be regulated by the decision of the Court of Appeal in *D. Owen and Co.* v. *Cronk* [1895] 1 Q.B. 265. In that case the company had executed a trust deed to secure the payment of debentures which it had issued. The deed conferred on the trustees the usual powers on the happening of certain events to enter into possession of the company's property, to carry on the company's business, and to use the name of the company. It was also provided that at any time after the right to enter upon the mortgaged premises should have arisen, the trustees might appoint a receiver of the property charged and the receiver was to be "deemed to be the agent of the company." The trustees had appointed a receiver under their powers under the trust deed without going to the court, and the receiver opened an account at a bank in the name of the company, his own name being added as receiver. The business of the company was carried on under the receiver by a manager. This manager, without the knowledge of the receiver, compelled the plaintiffs in the action to pay an extortionate sum for work done for them by the company, and this sum was received by the receiver and paid into the account. The plaintiffs sought to make the receiver personally liable to repay the sum, but in this they failed, it being held that the receiver had paid the money into the account merely as agent and without any notice of the extortion. The position of the receiver was dealt with by Lord Esher, M.R., in these words, at p. 271: "In the present case the defendant accepted the appointment of receiver . . . upon the terms contained in the debenture trust deed . . . Is there anything in the deed to render him personally liable in respect of a business the carrying on of which could never be of any benefit to himself? He would have to account, not to the court, but to the persons who appointed him. He was called in the deed a receiver; but he was really an agent. What is the position of such an agent? He is a mere servant. He has no doubt great powers; he has, for instance, power to appoint other servants. But such a power is not uncommonly given to an agent or servant. A farm bailiff often has that power. He has power too to order goods in the name of his master,

but he is not personally liable to pay for them when so ordered." The other judgments of the court are short and to the same effect, and I will only notice them here to the extent of referring those who wish to pursue the matter to the last half of the judgment of Rigby, L.J.

I pass now to another case which came before the Court of Appeal a few weeks later, when that court consisted of the same three learned judges who had heard *D. Owen & Co.* v. *Cronk*, *supra*. This case—*Burt Boulton & Hayward* v. *Bull* [1895] 1 Q.B. 276—deals with the position of a receiver appointed by the court. The facts are very simple. The court had appointed certain persons who were the defendants in the action to be receivers and managers of the business of a company. The company was not in liquidation. The receivers gave an order for goods required for the business to the plaintiffs. The order was in writing, expressed to be given for the company, and the words " receivers and managers " were added below the signatures of the defendants. It was clear, therefore, that the defendants were acting in their capacity as receivers when they placed the order, and after the decision in *D. Owen & Co.* v. *Cronk*, *supra*, there could have been no question of making them personally liable under the contract if they had been appointed out of court under any instrument declaring them to be the agents of the company. The fact of their appointment by the court, however, made all the difference, and on their being sued on the order placed by them they were held to be liable. Let us see what Lord Esher, M.R., has to say this time : " What is the position," he asks, " of such a receiver [i.e., a receiver appointed by the court] ? He is not the agent of the company. They do not appoint him : he is not bound to obey their directions : and they cannot dismiss him, however much they may disapprove of the mode in which he is carrying on the business. Only the court can dismiss him or give him directions as to the mode of carrying on the business or interfere with him if he is not carrying on the business properly. The incidents of his relation to the court are such as would, if they existed as between him and an ordinary person, constitute him an agent for such person : but it is, of course, impossible to suppose that the relation of agent and principal exists between him and the court. What is the inference that necessarily arises ? It must be that the intention is that he shall act in pursuance of his appointment on his own responsibility and not as an agent, because otherwise nobody will be responsible for his acts. The company cannot be liable, for he is not their agent, and the court clearly cannot be liable. Therefore any orders which he may give under such circumstances as manager must *prima facie* be taken to be orders given on his own responsibility and credit." Of course, this inference is only a presumption and it can be rebutted if circumstances exist to show that the receiver is pledging some other person's credit and not his own. In the ordinary case, however, in the absence of any such special circumstances the receiver must be taken to pledge his own credit with an eye to the assets of the business for an indemnity.

I now turn to the cases which deal with the position of the receiver after the company has gone into liquidation. The first case is *Gosling* v. *Gaskell* [1897] A.C. 575, where the House of Lords had to consider an attempt to make trustees of a debenture trust liable as the principals of the receiver. The trust deed contained the familiar provisions including a provision that any receiver appointed by the trustees should be the agent of the company. The trustees appointed a receiver under their powers under the deed, and thus far, therefore, the position was the same as in *D. Owen & Co.* v. *Cronk*, *supra*, the receiver carrying on the business of the company as the company's agent. Shortly after the appointment of the receiver, however, the company was ordered by the court to be wound up. The receiver continued to carry on the business as before and in the course of doing so placed certain orders for goods. The suppliers of these goods subsequently brought an action against the trustees for the price of the goods. Their argument was that the receiver could no longer be considered to be the agent of the company after the commencement of the winding up, and that thereupon he automatically became the agent of the trustees. The premise was right but the deduction was wrong. It is true that after the commencement of the winding up the receiver could no longer be the company's agent for doing things which the company was now prevented from doing, but it by no means follows that this fact alone is sufficient to make the receiver somebody else's agent. It was admitted in *Gosling* v. *Gaskell*, *supra*, that no new authority was in fact given to the receiver after the presentation of the winding-up petition, and " why the making of the order to wind up the company should suddenly convert [the receiver], who was there as the agent of the company, into the agent of the trustees " was a problem which Lord Halsbury for one was unable to solve. Lord Watson was at a loss to understand " upon what principle the trustees of the debenture-holders became subrogated as principals, in room and stead of the company, as soon as it incurred a statutory incapacity to occupy that position." That disposed of the action, and the suppliers of the goods failed to get their money from the trustees. Whether they got it from somewhere else history does not relate, but in the light of after events it seems that they were in a position to do so. So far as the action before the House was concerned it was not necessary, as Lord Herschell observed, to decide whether the receiver himself could be made liable, but at least one other of the noble and learned lords seemed to think that he might, and the comparatively recent case of *Thomas* v. *Todd* [1926] 2 K.B. 511, is now an express authority on the point in favour of the creditor and against the receiver.

The case against the receiver can either be founded on liability under the contract or it can be an action for damages for a breach of warranty of authority. The first remedy is appropriate where the contract is made with a receiver who can have no principal and does not profess to have one, while the second is appropriate where the receiver holds himself out as the agent of a principal who cannot in the circumstances legally occupy that position. In *Thomas* v. *Todd*, *supra*, Wright, J., found that the plaintiff had simply dealt with the receiver as an individual and on the receiver's representation that he was receiver and manager, without considering any further aspect of the matter. It followed in the judgment of the learned judge that the receiver, and the receiver alone, was personally liable on the contract. In this respect the case differed from *Gosling* v. *Gaskell*, *supra*, because in that case the receiver purported in express terms to act for the company at a time when by reason of its liquidation he had no authority to do so. The right remedy of the respondents in that case would have been an action against the receiver, based on breach of warranty of authority and not an action on the contract. But one way or the other, it seems clear that if the receiver continues to place orders after the commencement of the winding up he can be made personally liable for the goods supplied or work done unless there are special circumstances to show that in placing the orders he was piedging somebody else's credit and had authority to act as the agent of that other person.

A Conveyancer's Diary.

Perpetually Renewable Leases.

THE law regarding perpetually renewable leases, or rather regarding the prevention of such leases, is now contained in the 15th Schedule to the L.P.A., 1925. The general scheme of the schedule may shortly be stated as follows.

Every such lease subsisting at the commencement of the Act is converted into a lease for a term of 2,000 years, to

commence from the date at which the existing term commenced, at the same rent and generally subject to the same conditions as under the existing lease, and every perpetually renewable underlease subsisting at the commencement of the Act is converted into an underlease for a term of 2,000 years less one day at the same rent and subject to the same conditions as under the existing underlease. That is the effect of cls. 1 and 2.

Clause 3 provides that every term or sub-term created by the Act shall be subject to all the same trusts, powers, executory limitations, rights and equities and to the same incumbrances as the term or sub-term which it replaces, and that where an infant is entitled, the person of full age who becomes entitled to the legal estate of the infant shall be deemed to have been entitled to the lease or sub-term at the commencement of the Act.

Clause 4 enacts that the Act shall not operate to confer any better title to any term or sub-term thereby created than the title to the perpetually renewable term or sub-term or interest which it replaces and also provides that the Act shall not render any duly stamped lease or instrument liable to any further stamp duty.

Clause 5 deals with dispositions purporting to create perpetually renewable leases after the commencement of the Act. Any such disposition is to take effect as a demise for a term of 2,000 years or, in case of a sub-lease, for a term less in duration by one day than the term out of which it is derived commencing from the date of the commencement of such term or sub-term.

Clause 6 contains similar provisions with regard to contracts to create perpetually renewable leases or underleases in force at the commencement of the Act, subject to an adjustment of the rent having regard to the loss of fines which would have been payable on renewal.

Clause 7 (1) provides that all contracts entered into after the commencement of the Act operate in the same way, that is, as contracts to grant leases for 2,000 years or underleases for the term out of which they are derived less one day.

Clause 7 (2) must have special attention. The clause reads as follows:—

> "Any contract entered into after such commencement" (i.e. the commencement of the Act) "for the renewal of a lease or underlease for a term exceeding sixty years from the termination of the lease or underlease and whether or not contained in the lease or underlease shall (subject to the express provisions of this Part of this Act) be void."

The effect of that is that the lessor may not enter into a contract with his lessee to grant a reversionary lease to take effect after the expiration of the existing term, but he may enter into such a contract with any other person. There does not occur to me any reason for this. The other provisions in the schedule go as far as need be to prevent what are called perpetually renewable leases. This clause is designed apparently to prevent the circumvention of those provisions, but it does seem illogical.

The clause, however, does not deal with actual leases but only with contracts to grant leases. It does not prohibit the grant of reversionary leases but only agreements to make such grants.

The proviso "subject to the express provisions of this Act" appears to refer to cl. 9, which excepts from the operation of the Act rights of renewal conferred by the Small Holdings and Allotments Act, 1908.

In connection with cl. 7, reference should be made also to s. 149 (3) of the L.P.A., 1925, which enacts—

> "A term at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument creating it shall be void and any contract made after such commencement to create such a term shall likewise be void; but this sub-section shall not apply to any term taking effect in equity under a settlement or created out of an equitable interest under a settlement or under an equitable power for mortgage indemnity or other like purposes."

If, therefore, a lease for more than twenty-one years contains a covenant to renew (for whatever period) the covenant is void, and if a lessor enter into a contract to renew with a lessee whose term has more than twenty-one years to run, that contract is also void.

If, therefore, a tenant agrees with his landlord to make improvements or alterations on the demised premises in consideration of the landlord agreeing to grant a renewal of the term at the end thereof, then if the existing term has more than twenty-one years to run the agreement is void, and if the term has less than twenty-one years to run the renewed term must not exceed sixty years.

In commenting upon this provision the learned editors of "Wolstenholme and Cherry's Conveyancing Statutes" observe "Thus, where a lease intended to be renewed has more than twenty-one years to run, all that can be done is to give an informal letter that a contract will be entered into when there are less than twenty-one years to run." I like that "informal letter"!

It appears that the object of these provisions was to "simplify" the title by inducing a surrender and the granting of a new lease instead of a renewal. I do not see that much simplification results. Certainly the new lease would generally be a more complicated instrument than a renewed lease, for presumably the terms and conditions would be the same as those in the surrendered lease for the residue of the term granted by that lease and those for the remainder of the new term might be different apart from a mere alteration in the rent.

It should be borne in mind that where there is a valid contract for renewal it ought to be registered as a land charge under L.C.A., 1925, s. 10, Class C (iv).

It will be observed that s. 149 (3) does not apply to a term taking effect under a settlement or under an equitable power to mortgage, or the like. The sub-section therefore has no application to terms to commence at a future date created by a settlement for the purpose of raising portions, securing jointures, raising money to discharge incumbrances or the like, nor to powers to create terms for such purposes.

Landlord and Tenant Notebook.

Window Panes.

I USE the word "panes" advisedly when describing the subject-matter of this article, for investigation shows that "window" means, or originally meant," an opening in the wall of a building for the admission of light and air." Glazed windows, like tea and pneumatic tyres and a number of other comforts and necessities, were once luxuries; and possibly the latest kind of shop-window, to be seen (or, perhaps, I should say "not to be seen," this being the idea) in the more expensive establishments can be classed as such; so that, if it be not a trade fixture, a tenant shopkeeper would be well advised to consider the possibility of compensation for improvements under L.T.A., 1927, s. 1, before installing one.

Among the earlier authorities is a note to *Herlakenden's Case* (1589), 4 Co. Rep. 62*a*, a decision which actually dealt with waste and dotards. The erudite reporter, however, concludes with this: "Note, reader, Mich. 18 & 19 Devon: it was adjudged that waste might be committed in glass annexed to the windows, for it is parcel of the house . . . and although the lessee himself at his own costs put the glass in the windows, yet in being once parcel of the house he could

not take it away, or waste it, but he should be punished in waste . . . Note, also, *inter Warner et Fleetwood*, Mich. 41 & 42 Eliz. in C.B., it was resolved *per totam curiam*: that glass annexed to windows by nails, or in other manner, by the lessor or by the lessee, could not be removed by the lessee, for without glass it is no perfect house . . . and peradventure great part of the costs of the house consists of glass which if they be open to tempests and rain, waste and putrefaction of the timber of the house would follow . . ."

It would appear that window-panes had thus reached the transition stage: they were expensive, but considered necessary; and they formed part of the freehold. Soon the question of liability to repair under a general repairing covenant came up for decision, namely, in *Pyot* v. *Lady St. John* (1614), Cro. Jac. 329, a claim for dilapidations to a house and orchard at Bethnal Green. The tenant's covenants obliged the defendant to repair the house, edifices and buildings with necessary reparations, and to deliver up *domus et alia præmissa* sufficiently maintained. The schedule alleged, *inter alia*, the breaking of the glass of some windows. Two points were decided on this: one, that that broken glass included cracked glass; the other, that "such petty things," as the defendant called them, were indeed covered by the covenant.

Coming to more modern times, *Green* v. *Eales* (1841), 2 Q.B. 225, is an authority on many things, such as the effect of unforeseen events on liability on a covenant to repair, and the measure of damages when a landlord's covenant to repair is broken; but for present purposes what matters is that the premises included a plate-glass window and the landlord was under an obligation to repair "external parts except glass and lead in windows." But it was in consequence of his failure to keep an external wall in repair that the wall sank and the plate glass broke; and this item cost him £25.

By this time the status of window panes as part of the house was fairly established. In *Bishop* v. *Elliott* (1855), 11 Ex. 113, Coleridge, J., observed: "With respect to locks and keys, bolts, and bars, there can be no question, whether properly called fixtures or not, that the tenant cannot remove them; they are as much part of the house, and to go with it, as the doors or windows to which they may be attached or belong." In *Climie* v. *Wood* (1869), L.R. 4 Ex. 328, Willes, J., dealing with the status of an engine and boiler claimed by parties deriving title from mortgagees and mortgagor respectively, observed that some things, such as pictures, were obviously chattels, and went on: "On the other hand, things may be made so completely part of the house, as essential to its convenient use, that even a tenant could not remove them. One example of this class of chattel is to be found in doors and windows."

This might have ended the chapter if someone had not coined the expression "landlord's fixtures"; quite meaningless if analysed, but none the less capable of misleading.

Before mentioning the most recent authority in which the use of that expression played a part, it would be useful to refer to an unreported decision to be found in *The Times* of the 17th June, 1879. The case, *Ball* v. *Plummer*, was one in which a tenant sued his landlord on a covenant to do outside repairs, and the issue arose whether this covered windows. In the Court of Appeal Bramwell, L.J., said: "As to the mending of the broken windows it was clear that the mending of them came under the head of 'outside repairs,' the windows being part of the skin of the house, and that therefore the defendant was bound to mend them."

In *Boswell* v. *Crucible Steel Co.* [1925] 1 K.B. 119, C.A., the position was as follows: The plaintiffs let the ground floor of some premises in Southwark to the defendants under a lease containing a tenant's covenant "to keep the inside of the demised premises including all landlord's fixtures in good repair." The plaintiffs themselves covenanted to repair "the demised premises with all necessary reparations . . . except such repairs as are hereby agreed to be executed by the lessees."

There were a number of plate-glass windows, of a kind which did not open, in the outer wall of the premises, and trouble arose when mischievous persons broke seven of them. The plaintiffs called upon the defendants to repair them on the ground that they were "landlord's fixtures"; the defendants refused; the plaintiffs did the repairs themselves and sued for the cost in the local county court. The judge's decision in their favour was upheld by a Divisional Court.

Argument centred largely round the question whether the windows were or were not "landlord's fixtures"; but the defendants-appellants had an alternative contention, namely, that though in *Climie* v. *Wood*, *supra*, Willes, J., was discussing fixtures, he did not mean, when characterising doors and windows as part of the land, that they belonged to that category. While the court, allowing the appeal, does not give us any guidance as to the status of windows of the kind that open which might be installed during the term, I think it is fair to summarise the reasoning in this way: these windows were not landlord's fixtures because they were not fixtures at all (if they were, the whole house would be a landlord's fixture!): they were part of the original structure, part of the "skin," and thus covered by the landlords' covenant.

Our County Court Letter.

HIRE PURCHASE OF MOTOR CAR.

In *Cadman* v. *F. Meadows & Co.*, recently heard at Coventry County Court, the claim was for the return of a car or its purchase price, viz., £73. The counter-claim was for £4, being the arrears due under a hire-purchase agreement, and £1, being the cost of collecting the car. The plaintiff's case was that in February, 1938, he signed an agreement providing for the deposit of £60 on the purchase of a car, and the payment of 5s. per week for twelve months. On the 4th July the plaintiff was in arrears, and apologised to the defendants, who said that it would be all right if the plaintiff paid when he could. Two weekly payments were then made, and another 10s. was paid on the 8th July. The plaintiff then became unemployed, and, on the 6th September, he was notified that the agreement would be terminated unless the arrears were paid up. On the 17th September, two men (the defendants' agents) removed the car, and the plaintiff offered to pay £10 the following day. The defendants refused this offer on the ground that the agreement had been terminated. Their case was that the plaintiff was never told that he might pay when he could. The interview was on the 2nd July, and the only advice given was to lay up the car in order to save running expenses. His Honour Judge Donald Hurst observed that the plaintiff, like many others, had signed a document without seeing how it affected his position. The claim failed, and judgment was given for the defendants thereon. There was no defence to the counter-claim, except that 10s. was ample for collecting the car. Judgment was therefore given for the defendants for £4 10s. with costs. It is to be noted that, under the Hire-Purchase Act, 1938 (date of commencement the 1st January, 1939), it is provided by s. 1 (*a*) that the Act only applies in cases where the hire-purchase price does not exceed—if the agreement relates to motor cars—the sum of £50.

SPECIFIC PERFORMANCE.

In a recent case at Braintree County Court (*Coates* v. *Thornton*) the claim was for specific performance of a contract to purchase for £360 a cottage at Stebbing. The plaintiff's case was that the cottage was advertised for sale at £350, but the plaintiff was so anxious to acquire it that she agreed to pay £360. She accordingly signed a contract, bearing the words "as seen and agreed," and she also paid £36 by way of deposit.

This cheque, however, was stopped. The defendant's case was that she told the plaintiff she wanted a mortgage on the property, as she only had £36 in cash, but could pay 14s. a week in interest. The contract was only signed on the express understanding that the defendant would not proceed with the transaction unless her society would advance her the money. Evidence was given from a friendly society that the property was surveyed, but the advance was not approved. His Honour Judge Hildesley, K.C., accepted the defendant's version, and gave judgment in her favour, with costs.

REMUNERATION FOR REARING FOAL.

In *Bullock* v. *Hunt*, recently heard at Atherstone County Court, the claim was for £5 for rearing a foal from the 15th May to the 28th October, 1935. The counter-claim was for £6 for six weeks' keep of the plaintiff's mare, viz., from the 12th May to the 23rd June, 1935. The case for the plaintiff was that he had a mare, which lost her foal, and he therefore offered his mare as a foster mother to an orphan foal, the property of the defendant. The arrangement was successful, as the mare and foal took to each other. The normal charge was £12, but a nominal charge was made of £5. The defendant's case was that he could have reared his orphan foal on the bucket, and he only took the plaintiff's mare to enable it to be shown as a brood mare. This was done as a favour to the plaintiff, who was therefore not entitled to claim for the hire of his mare. His Honour Judge Donald Hurst accepted the version of the plaintiff and gave judgment in his favour, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

REDEMPTION IN CASE OF BLINDNESS.

In *Acton's Stoneware Limited* v. *Molloy*, at Barnsley County Court, the respondent had been a clay getter, and had become blind from an injury caused by his striking a live detonator with a pick. Total incapacity was admitted and the respondent's case was that he was entitled to 75 per cent. of the annual value of the weekly payments. The applicants contended, however, that the expectation of life, in the case of the respondent, was sub-normal. The medical evidence was that the expectation of life was five, seven or eight years less than normal. The submission for the applicants was that this was a matter which the court, in its discretion, might take into account. His Honour Judge Essenhigh made an award on the 75 per cent. basis, viz., for £881 3s. 10d., with costs to the respondent. A feature of the above case was that the respondent's solicitor, Mr. H. H. Coldwell, is also blind.

AMPUTATION OF LEG AS TOTAL INCAPACITY.

In *Sturrock* v. *Holroyd Coal Co. Ltd.*, at Barnsley County Court, an award was claimed as for total incapacity. The applicant's case was that, at the age of fourteen, he was injured at Ferrymoor Colliery and had had his leg amputated above the knee. An artificial leg was held in position by a belt and shoulder-straps, and the applicant had been employed as the driver of a stationary engine. This employment ceased in August, 1938, when the colliery closed, and the applicant's case was that he was totally incapacitated. The respondent's case was that the incapacity was only partial, as the applicant could do work at which he could sit occasionally. His Honour Judge Essenhigh observed that he himself had suffered a similar amputation in the war. A man with two legs off, below the knee, was better off than a man with one leg off above the knee. Extraordinary feats of walking and climbing had been performed by men with artificial legs, but they were young men. An award was made of 35s. a week on the basis of total incapacity.

Reviews.

Impossibility of Performance in Contract. By Rudolf Gottschalk, LL.M. (Lond.), of Gray's Inn, Barrister-at-Law. 1938. Demy 8vo. pp. xvi and (with Index), 146. London: Stevens & Sons, Ltd. 7s. 6d. net.

The learned author of this volume was formerly a member of the German Bar, and brings to his work a wide experience of the subject which enables him to write in a manner that is at once original and impressive. The volume is critical of the doctrines at present in vogue, and contains a review not only of practice in the English courts but of the practice in America, Germany, South Africa and other countries. "Nothing," he tells us, "is more startling for a lawyer trained in a foreign system of law than the rule of English law that in cases of supervening impossibility or 'frustration of the adventure' the 'loss lies where it falls.'" The doctrine of "frustration" is, indeed, the theme which runs through the whole of the book, and the volume may be warmly recommended to all students who are concerned with the subject in its various phases.

Company Law for Commercial Students and Business Men. By Albert Crew, of Gray's Inn and the Middle Temple, Barrister-at-Law. Fourth Edition. 1938. Demy 8vo. pp. xxv and 374 (Index, 39). London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

This present edition has been revised and brought up to date. Like its three predecessors, it is primarily intended to supplement the law lectures which business men and commercial students attend, either for the purpose of preparing for the examinations in connection with the professions of Accountant and Secretary, or the company law examinations held by the various public examining bodies. As a handbook of general use in the principles and practice of this branch of law as affecting the classes for whom it is intended, this work will continue to be appreciated.

Obituary.

Mr. J. A. BATLEY.

Mr. James Arthur Batley, solicitor, senior partner in the firm of Messrs. Maxwell, Batley & Co., of Leadenhall Street, E.C., and Hampstead, died in London on Monday, 26th December, at the age of sixty-three. Mr. Batley, who was admitted a solicitor in 1899, was formerly a member of the Council of the Lawn Tennis Association.

Mr. H. C. EDINGTON.

Mr. Harry Conway Edington, solicitor, of Newport, Mon, died recently at his home at Newport. Mr. Edington was admitted a solicitor in 1901.

Major J. W. HILLS.

Major John Waller Hills, M.P., retired solicitor, of Palace Gardens Terrace, W., died on Saturday, 24th December, at the age of seventy-one. He was educated at Eton and Balliol College, Oxford, and was admitted a solicitor in 1897. He was elected Conservative Member for Durham City in 1906, and for Durham County in 1918, and in 1922 he became Financial Secretary to the Treasury. He was defeated at the next election, but returned as Member for Ripon in 1925.

Mr. H. WARREN.

Mr. Herbert Warren, solicitor, senior partner in the firm of Messrs. Balderston, Warren & Co., of Bedford Row, W.C., and of Baldock and Letchworth, died on Wednesday, 21st December, in his eighty-second year. Mr. Warren was admitted a solicitor in 1883.

To-day and Yesterday.

LEGAL CALENDAR.

26 DECEMBER.—Reginald John Smith, who died on the 26th December, 1916, presents a remarkable instance of a fairly late change from a legal career to a literary one. Born in 1857, he was called to the Bar at the Inner Temple, attaining sufficient success to devil for the great Sir Charles Russell for whom he acted as junior in the defence of Mrs. Maybrick. In his legal work he was lucid in his method, painstakingly careful and extraordinarily courteous. In 1893 he married the daughter of George Smith, the great publisher, and in the following year he joined his father-in-law's firm, taking silk just before he abandoned his practice. He became head of the firm and editor of the *Cornhill Magazine*, in both capacities putting good literature above mere profit making.

27 DECEMBER.—On the 27th December, 1899, Mr. Serjeant Spinks died at his home, Brenley House, near Faversham. He was the last survivor at the Bar of the ancient Order of the Coif. Thereafter, Lindley, M.R., and Lord Field alone remained of a body going back to the very roots of English jurisprudence. Serjeant Spinks, the son of a London solicitor, was born in 1816, came to the Bar in 1843 and joined the ranks of the *servientes ad legem* in 1862.

28 DECEMBER.—On the 28th December, 1823, a defendant sued in the Court of Requests on a debt of some years' standing put in the defence that he had been sentenced to be hanged. "Sentenced to be hanged?" exclaimed the chairman. "Yes," said the man with an attempt to whimper, "five years ago I was sentenced to be hanged at the Old Bailey." "For what offence?" "For burglariously breaking into a dwelling-house." "Whose house?" "My father's. Yes, sir, five years ago I was sentenced to be hanged by the neck by the late worthy Recorder who, however, was doomed to go out of the world before me. The court changed my sentence to transportation, so that whatever money or goods I had was forfeited to the King." The chairman held that the defence was a complete answer.

29 DECEMBER.—About the great Lord Erskine's later matrimonial activities there hangs a certain obscurity. His second wife was a lady called Mary Buck whom he married at Gretna Green, though the date of the adventure is uncertain. He does not seem to have been very happy in his choice, for on the 29th December, 1820, we find the Commissary Court at Edinburgh engaged in the singular task of considering a divorce petition by the ex-Lord Chancellor. Though a Scot by birth, he had passed nearly all his life in England and he was now relying on forty days' spent in Scotland earlier in the year as sufficient to establish domicile there. The difficulty, however, proving insuperable, he abandoned the suit and no more was heard of the matter.

30 DECEMBER.—On the 30th December, 1819, John Coleridge, afterwards a Justice of the Queen's Bench, and then a young barrister, wrote: "I like my profession very much, but I think it of little consequence whether a man passes thirty years out of eternity as a lawyer or a soldier or whether he dies Lord Chancellor or a simple gentleman. There is nothing so likely or so to be dreaded in my profession as that it should absorb me more and more the older I get. 'Dying in harness,' which some old judges talk of with so much delight, is something shocking to me now."

31 DECEMBER.—On the 31st December, 1935, Lord Reading, the only Jew to become Lord Chief Justice of England, died.

1 JANUARY.—Mr. Baron Clarke died on the 1st January, 1607, after twenty years' judicial service. His long career on the Bench is not unique, but perhaps the fact that he was married four times, all the ladies being widows, is more remarkable. Without the aid of the axe or the divorce law he made a fine showing even against Henry VIII.

THE WEEK'S PERSONALITY.

In all the history of English law there is not a more amazing career than Lord Reading's—Solicitor-General, Attorney-General, Lord Chief Justice of England, Envoy Extraordinary to the United States of America in time of war, Viceroy of India. Outstanding in his comprehensive knowledge of law, his profound acquaintance with finance, his gifts of persuasiveness and diplomacy, he towered above most of the lawyers of his generation. Good health gave him an immense initial advantage, and to someone who asked him to what he chiefly attributed his success he once replied "The only thing I can tell you is that, first, I always feel well and in good spirits, and secondly, I seem to have an intuitive power of putting my finger on the crucial point in any case in which I am pleading and always keeping that point in mind throughout the trial." Strangely enough, like many of the most eminent lawyers, he shone in the House of Commons with less brilliance than elsewhere. As a boy he had been strikingly handsome, and handsome he remained to the end: slim, upright and taut of figure, with a keen eye, a lofty forehead and a never-failing charm.

PLACE OF PUNISHMENT.

When a Lancastrian, recently brought before a London police court on a charge of begging, promised that if he was given a chance he would return to Manchester at once, Mr. Metcalfe said "The only punishment I can think of is to send you back to Manchester. That's bad enough for anyone." The *dictum* recalls the unpunctuated newspaper report that a man had been "sentenced to a fine of forty shillings or one month at Hull." Some places have associations which are irresistibly jocular even to the judicial mind. It was for the sake of a joke about a town that Mr. Justice Hawkins did one of the few considerate actions recorded of his career on the Bench. An application was made for an adjournment on the ground that the principal witness in the case was an actor who had to play in the provinces that night. "Where does he want to go?" asked the judge. "To Coventry, my lord," replied counsel. "Let him go," said Hawkins. Another story comes from New Zealand where a solicitor defending a woman charged with fortune telling pleaded that she was a spiritualist and that it was part of her religion. Eloquently he pleaded: "We don't want to import into this young country the religious feuds and persecutions of the old. We don't want to re-kindle in our midst the martyr fire of Smithfield." Unfortunately for him, the fact that at Smithfield in New Zealand there were considerable slaughter-houses gave the magistrate his chance to retort: "No. There are quite enough bad smells from Smithfield as it is. Forty shillings and costs."

JUSTICE AS REPRESENTED.

It was recently stated in the press that the large gilt lady who makes the dome of the Old Bailey look so top-heavy is the only statue in which Justice is not represented as blindfolded. I believe, however, that there is another in the Cour de Cassation in Paris forming part of a group representing Law and Justice locked in an embrace. It is said that when the preliminary cast was shown to M. Briand, himself a distinguished lawyer, and the allegory was explained to him, he replied with a smile: "Yes, I understand quite well. Before parting Law and Justice are kissing each other good-bye. Perhaps they will never meet again."

Notes of Cases.

House of Lords.

Caxton Publishing Co., Ltd. *v.* Sutherland Publishing Co., Ltd. (Consolidated Appeals).

Lord Thankerton, Lord Russell of Killowen, Lord Macmillan, Lord Roche and Lord Porter. 17th November, 1938.

COPYRIGHT—INFRINGEMENT—REMEDY FOR INFRINGEMENT AND CONVERSION—WHETHER CUMULATIVE—PERIOD OF LIMITATION APPLICABLE—HOW ACT OF CONVERSION CONSTITUTED—MEASURE OF DAMAGES.

Consolidated appeals from two orders of the Court of Appeal, one reversing an order of Farwell, J., and the other varying an order of Crossman, J.

The plaintiffs, the Sutherland Publishing Co., Ltd., were the owners of the copyright in a literary work entitled "Heating and Ventilating." The defendants, the appellants, were the publishers of a book entitled "The Modern Practical Plumber." It was admitted that portions of four sheets of the defendants' work were infringements of the plaintiffs' copyright. The plaintiffs brought an action against the defendants claiming (1) an injunction restraining the infringement: (2) an inquiry as to damages: and (3) delivery up of all infringing books and material. The defendants, while admitting the infringement, contended (1) that the plaintiffs were not entitled to both damages for infringement of copyright under s. 6 (1) of the Act, and at the same time to damages for conversion under s. 7: (2) that the limit of three years provided by s. 10 of the Act applied both to a claim for infringement under s. 6 and to a claim for conversion under s. 7: (3) that the conversion was the printing or order to bind, or binding of their work, and not its sale: and (4) that the damages were not to be calculated by finding the price of their complete work and then attributing to the plaintiffs' copyright some portion of that price after making due allowance for the cost of binding, but was the value of the plaintiffs' work to the plaintiffs as contained in the four sheets, a value which they said was mere pulping value, or at most a small portion of the cost of the production of the whole work. Farwell, J., who was asked to give a decision on the first point alone, decided that the remedies under ss. 6 and 7 were alternative and not cumulative. The Court of Appeal held that the damages were cumulative. On the other points Crossman, J., to whom they were referred after the decision in the Court of Appeal, decided that the three years' limitation applied to both claims: that the order for binding was the conversion: and that the only way to determine the value of the respondents' portion of the work was to take the selling price of the whole volume, find what proportion was attributable to the plaintiffs, and, after making due allowance for the binding, to divide the total price by that proportion and multiply it by the number of copies sold. In that way he arrived at a sum of £150 as the value of the converted portion. The Court of Appeal (MacKinnon, L.J., dissenting) took the view, by a majority, that the three years' limitation applied only to the damages under s. 6, and that the ordinary period of six years was the proper period of limitation under s. 7. They also held that the act of conversion was not the order for binding, but the sale of the infringing work. Otherwise, they affirmed the decision of Crossman, J., varying the amount to £494. The defendants now appealed.

LORD RUSSELL OF KILLOWEN said that, on the first question, he agreed with the view that it was impossible to find any safe ground for holding that the Legislature intended that those remedies should be alternative and not cumulative. As to the second question, as s. 10 came at the end of five sections, grouped together under the title "civil remedies," it seemed material that the period of limitation thereby fixed was intended to apply to all proceedings for the enforcement of those remedies or any of them. The remedies were for the protection of copyright. To that *prima facie* assumption two objections were suggested—first, that an action under s. 7 was not "an action in respect of infringement of copyright," and secondly, that proceedings might be taken under s. 7 where there had not been any infringement of copyright, and that, consequently, in such a case no point of time could exist from which the period of three years would begin to run. He had come to the conclusion that those objections could not prevail. In his opinion, as a matter of construction s. 10 applied to proceedings under s. 7. As regards the question, what was the act of the appellants by which the infringing copies were converted, in his opinion the act of binding together the sheets which contained the infringing matter was the act of conversion. The only relevant question was whether the appellants dealt with the infringing copies in a way inconsistent with the rights of the owner, and if so, when? They did so deal with them when they began to get them stitched together to incorporate them with their own property into a book. They then unequivocally dealt with them as their own, and therefore in a manner inconsistent with the rights of the plaintiffs. As for the question of the proper measure of damages for that conversion, which was in fact an unconscious conversion, his inclination would be to award only a small sum of some £35 on the footing that the fictional property of the respondents which had been converted was not to be valued as being a proportionate part of a completed whole, but merely as being pieces of paper with printed matter thereon for which the appellants would be prepared to pay a sum equal to what it would cost them to replace them. But Crossman, J., the Court of Appeal and all their lordships thought otherwise. He (his lordship) was not prepared to disturb that unanimity. In his opinion, the first appeal from the decision of the Court of Appeal reversing the order of Farwell, J., should be dismissed, and the second appeal should be allowed, and the judgment of Crossman, J., restored.

The other noble Lords concurred.

COUNSEL: *Sir Stafford Cripps*, K.C., *E. J. Macgillivray* and *G. G. Slack*, for the appellants: *K. E. Shelley*, K.C., *C. W. Measor* and *Guy Aldous*, for the respondents.

SOLICITORS: *Oswald Hickson, Collier & Co.*; *White & Leonard*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

In re Phillips; Public Trustee *v.* Phillips.

Greene, M.R., Scott and Clauson, L.JJ. 11th November, 1938.

COSTS—WILL—TWO-THIRDS OF RESIDUE BEQUEATHED TO NEPHEWS AND NIECES—ASCERTAINMENT OF PERSONS ENTITLED—INQUIRIES—INCIDENCE OF COSTS.

Appeal from a decision of the Vice-Chancellor of the County Palatine of Lancaster.

A testator, who died in 1936, left the residue of his estate on trust for sale, directing payment thereout of his funeral and testamentary expenses and all death duties. Thereafter, the residue was to be held in trust as to one-third for A.P. absolutely, and as to the remaining two-thirds for his nephews and nieces, children of his brothers J.P. and G.P., living at his death, in equal shares. It was ascertained that G.P. had left two children, but on account of difficulties in finding what children of J.P. were living at the testator's death an inquiry was directed by the court. It was found that there were two such persons. The matter having come before the court on further consideration, the Vice-Chancellor ordered taxation of the costs of the parties as between solicitor and client, directing the costs of the inquiry to be paid out of the two-thirds part of the estate given to the nephews and nieces. They appealed.

GREENE, M.R., dismissing the appeal, said that the point arose under Ord. LXV, r. 2B, of the Rules of the County Palatine, which was the same as R.S.C., Ord. LXV, r. 14B, under which the costs of inquiries to ascertain the person entitled to any legacy, money or share should be paid out of that legacy, money or share unless there were circumstances which in the discretion of the judge seemed to him sufficient to make it right to direct otherwise. It had been argued that the direction in the will to pay testamentary expenses before the distributable residue could be ascertained was sufficient to throw these costs on the residue as a whole under the power given by the rule, and that the court was entitled to interfere with the exercise of the judge's discretion. There had been no difficulty in ascertaining the person entitled to the one-third share. The only difficulty had arisen in relation to the other two-thirds in ascertaining the persons in question. The direction in the will had to be taken into account by the court, but was not by itself conclusive. It was undesirable to lay down any regulation as to the application of the rule. The discretion of the judge was one which he was entitled to exercise against giving the direction mentioned in cases where the persons to be ascertained were entitled to a share of residue and there was nothing to suggest that he should give that direction save a provision for payment of testamentary expenses. That had not the compelling force suggested. His lordship was fortified by *dicta* in *In re Whitaker* [1911] 1 Ch., at p. 218, and *In re Groom* [1897] 2 Ch., at p. 411. *Dicta* of judges accustomed to deal with matters of this kind might have attributed to them considerable weight embodying as they did their knowledge and experience of practice.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *George Maddocks; P. Bell; H. S. Barker.*

SOLICITORS: *T. A. Needham & Son*, of Manchester; *Cobbett, Wheeler & Cobbett*, of Manchester.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Vowles *v.* Armstrong Siddeley Motors Ltd.

Slesser, MacKinnon and Finlay, L.JJ. 21st and 25th November, 1938.

FACTORY—CUTTING MACHINE—INJURY TO EMPLOYEE—ACTION—ALLEGATION OF FAILURE TO FENCE SECURELY—FINDINGS OF JURY—FINDINGS THAT EMPLOYEE HAD NOT CONTRIBUTED TO ACCIDENT AND THE MACHINE WAS SECURELY FENCED—NEW TRIAL ORDERED.

Appeal from Porter, J.

The plaintiff, in the defendants' factory, worked a machine which was operated by a mechanical pedal and consisted of a moving knife for cutting metal. The knife was guarded, but at one point there was a space where the operative could put his fingers over the top of the guard. If he was so holding the material to be cut his fingers might come under the knife. The plaintiff, while working the machine, was cut and lost four fingers. Subsequently the protection of the blade was improved on the suggestion of a factory inspector by the attachment of a piece of wire mesh. The plaintiff brought an action against the defendants alleging breach of the statutory duty under the Factory and Workshop Act, 1901, s. 10 (1) (*c*), to keep the machinery securely fenced, or alternatively negligence. The defendants denied this, alleging that the accident had been caused by the plaintiff's negligence. The plaintiff's evidence was to the effect that the screw of the guard had become loose, rendering it ineffective. The jury found (1) that the machinery was securely fenced having regard to the fact that there was no mesh protection and that it was properly maintained in that the guard was kept secure; (2) that the plaintiff did not materially contribute to the cause of the accident; (3) that the defendants were not negligent in not putting the mesh protection or making sure that the guard was properly secured. Porter, J., gave judgment for the defendants. The plaintiff appealed.

SLESSER, L.J., ordering a new trial, said that the difficulty arose from the effect of the two answers, that the plaintiff did not contribute to the cause of the accident, and that the machinery was securely fenced though it had no mesh protection. The plaintiff said they were mutually contradictory, and relied on *Sowter* v. *Steel Barrel Co.*, 154 L.T., at p. 87, where it was said that the duty to make dangerous parts of machinery safe meant actual safety guarding against cases where "by reason of carelessness, indolence or haste, workmen sometimes omit to obey instructions." It was here argued that the jury having found that the workman did not contribute to the cause of the accident it must follow that the machinery was dangerous in that part was unfenced and no protection was afforded against inadvertence. It would seem that the jury considered that the plaintiff acted inadvertently. The duty to fence was absolute, and where there had been failure of a statutory duty the employer could only defend himself by showing that the failure was not the cause of the accident, but that the proximate cause was the plaintiff's own act (*Flower* v. *Ebbw Vale Steel, Iron & Coal Co.* [1936] A.C. 214). Nothing distinguished this from *Sowter's Case*, *supra*. Having regard to the finding that there had been no breach of statutory duty in not putting a mesh guard the plaintiff could not have judgment, but there must be a new trial. That finding and the finding that the plaintiff had not materially contributed to the accident could not reasonably stand alongside each other. The conclusions were absolutely unreasonable.

MACKINNON and FINLAY, L.JJ., agreed.

COUNSEL: *Arthur Ward and Doyle; R. Norris and Eric White.*

SOLICITORS: *Hartleys; Berrymans*, for *T. H. Duffell & Son*, of Birmingham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Vaux; Nicholson *v.* Vaux (No. 2).

Greene, M.R., Scott and Clauson, L.JJ. 6th December, 1938.

WILL—LEGACIES TO CHILDREN—SETTLEMENT OF PROPERTY ON CHILDREN AFTER DATE OF WILL—RULE AGAINST DOUBLE PORTIONS—WHETHER APPLICABLE.

Appeal from Simonds, J. (82 SOL. J. 215, 332).

By his will dated 1919, the testator bequeathed two legacies of £20,000 out of his residue to trustees on trust for his two daughters for life and after their death for their children and remoter issue as they should appoint and in default of appointment for their children attaining the age of twenty-one. If no child attained that age the legacy was to fall into residue. Subject to the legacies the trustees had power to deal with the residue for the benefit and provision of the testator's children and grandchildren as they might think best and most expedient subject to the appointment not offending against the rule against perpetuities (cl. 12). This conferred a valid power (see 82 SOL. J. 949). The testator had two sons and two daughters. In 1924 he executed a voluntary settlement of 8,000 shares of £5 each in a company. These were to be divided into four equal parts and held in trust for each of the children. There was a cross-gift under which in the event of the decease of any child without leaving any child who should attain a vested interest in his or her share, the share of the deceased child should accrue to the other children and be held on the trusts of their original shares. The testator died in 1925. His widow was living. One son was dead and the other children survived. None had any children. The trustees of the will had not exercised the power in cl. 12. Simonds, J., held that for the purpose of ascertaining the ultimate residue of the testator's estate and the shares therein of his children, but not for the purpose of ascertaining the ultimate residue of the estate and the share therein of his widow the legacies to the daughters must be treated as adeemed to the extent of the value of the shares settled on them in 1924. The daughters appealed.

GREENE, M.R., allowing the appeal, said that having regard to the conclusion the court had come to on the question whether or not the rule against double portions came into operation it was not necessary to consider other matters. The rule rested on two hypotheses: (1) that under the will the testator had provided a portion and (2) that by the gift *inter vivos* which was said to operate in ademption, he had again conferred a portion. The conception was that when a testator, having in his will given his children that portion of the estate which he decided to give them, thereafter conferred on a child a gift of such a nature as to amount to a portion, he was not to be presumed to have intended that the child should have both, the gift being taken as being on account of the portion given by the will. Not every gift *inter vivos* would cause the rule to come into operation. In some cases on the facts a gift might not be a portion at all and the rule would not apply. For the purpose of the first hypothesis above, the fact that the division of the estate was to be done by the trustees and not by the testator himself, did not mean that the benefits which the children might ultimately get were not to be treated as portions. His lordship would assume that the benefits conferred by the settlement were portions and that the two hypotheses on which the application of the rule rested were satisfied. Although when those hypotheses were satisfied there was a presumption against double portions, it could be rebutted, if in all the circumstances the intention to satisfy the portion in the will by the portion given *inter vivos* was negatived. Here, when he made his will, the testator had not finally decided on the shares of the estate which each child was to take. He must have contemplated that the trustees in the exercise of the discretion which he gave them might appoint all the residue to one daughter. The share, if any, of the residue which a daughter might get was not in a different position from the share, if any, which a son might get. If what a son got was a portion, what a daughter ultimately got must also be regarded as a portion. But even if this view were wrong his lordship's conclusion on the main question would be the same. In 1924, the testator having in mind the provisions of his will, vested in the trustees of the settlement shares which otherwise, if he had died without parting with them, would have formed part of the residue of his estate. He had made no definite provision in his will but had left it to his trustees to distribute his residue. The daughter's legacies were *minima* and not *maxima*. It was not possible to impute to the testator an intention that the daughter's legacies should be *pro tanto* adeemed. The circumstances that the trustees, though they could not reduce the daughter's interest below the minimum of £20,000, could add to it in any way they pleased, indicated that he intended that the distribution of the estate should be in their hands and that the rule should not operate. There was no authority in which the rule against double portions had been held to operate in a case where there was in a will a special power of appointment among the children.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *Grant*, K.C., and *J. L. Stone*; *Danckwerts*; *Daynes*, K.C., and *Winterbotham*; *Christie*, K.C., and *J. Strangman*.

SOLICITORS: *Patersons, Snow & Co.*, for *Ranson & Co.*, of Sunderland.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Greenwood *v.* Atherton.

MacKinnon, Goddard and du Parcq, L.JJ.
6th December, 1938.

EDUCATION — NON-PROVIDED ELEMENTARY SCHOOL — ACCIDENT TO CHILD IN PLAYGROUND—ACTION AGAINST MANAGERS—LIMITATION—PUBLIC AUTHORITIES PROTECTION ACT, 1893 (56 & 57 Vict., c. 61), s. 1—EDUCATION ACT, 1921 (11 & 12 Geo. 5, c. 51), ss. 28, 29, 30.

Appeal from Lewis, J.

On the 8th April, 1937, a child was injured by accident in the playground of his school, a non-provided voluntary school. It had existed with its body of managers before the Education Act, 1921, under which a grant towards the cost of education was received. On the 10th November, 1937, the child, suing by his father as next friend, issued a writ against the head teacher and managers, alleging negligence in failing to take due care of him while in attendance at the school. Lewis, J., held that they were protected by the Public Authorities Protection Act, 1893, s. 1.

MACKINNON, L.J., dismissing the plaintiff's appeal, said that the school was a public elementary school within the 1921 Act, and referred to ss. 27 (1) and 28. Under s. 29 the local education authority were responsible for and had control of it. Within the meaning of s. 1 of the 1893 Act the managers provided the playground in execution or intended execution of an Act of Parliament, the 1921 Act. This action not having been brought within the time limited by the 1893 Act, the penalty thereunder applied.

GODDARD and DU PARCQ, L.JJ., agreed.

COUNSEL: *Joseph Lewis*; *J. C. Jolly*; *Ralph Etherton*.

SOLICITORS: *Tyler & Co.*, for *Exton & Southworth*, of Bury; *E. G. Floyd*; *Sir George Etherton*, of Preston.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Inland Revenue Commissioners *v.* Mallaby-Deeley.

Greene, M.R., Finlay and Luxmoore, L.JJ. 9th December, 1938.

REVENUE—SUR-TAX—VOLUNTARY UNDERTAKING TO MAKE ANNUAL PAYMENTS TO COMPANY—CAPITAL OR INCOME PAYMENTS—RIGHT TO DEDUCT IN COMPUTING TAX.

Appeal from Lawrence, J. (82 SOL. J. 745).

M.D. was assessed to sur-tax in an estimated amount for the years 1929-30 to 1932-33 inclusive. In 1926, he gave the directors of a company called the Genealogical Publishing Co. Ltd. an undertaking under seal to provide them with £28,000 in five annual amounts of £5,600. On the 10th March, 1930, when £13,310 were still unpaid he entered into a covenant under seal for himself and his personal representatives in each year from 1930 to 1936, to pay the company such sums as after deducting income tax therefrom would leave £5,600, £3,000, £2,500, £2,000, £15,000, £15,000 and £700 respectively. In exchange for the deed, the previous undertaking was handed to M.D. and payments of £3,490 made between the 1st April, 1929, and the 10th March, 1930, were treated as having been made under the deed, leaving £13,310 payable thereunder. The deed contained no reference to the undertaking. Lawrence, J., held (*inter alia*) that the payments were income payments and proper deductions in computing income for sur-tax purposes. The Crown appealed. The personal representatives of M.D., who had died, appealed on other points in the judgment.

GREENE, M.R., allowing the Crown's appeal, said that it was not necessary to consider the other points, but the Court must not be taken as expressing any view on the correctness of the decision of Lawrence, J., on them. The question decided was whether the payments under the deed could be deducted. Under the Income Tax Acts, if the true bargain was that a capital sum should be paid, the fact that the payments were to be made by instalments would not give them an income character. The covenant in the 1930 deed was to pay the balance by annual payments, to pay a capital sum by instalments and not to make annual payments in the nature of income. M.D. was liquidating an obligation to pay a capital sum by a series of instalments differing from those under the earlier document.

FINLAY and LUXMOORE, L.JJ., agreed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. Hills*; *King*, K.C., and *F. N. Bucher*.

SOLICITORS: *Solicitor of Inland Revenue*; *F. R. Allen*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Chisholm *v.* London Passenger Transport Board.

Scott, MacKinnon and du Parcq, L.JJ.
20th December, 1938.

Road Traffic—Pedestrian Crossings—Effect of Pedestrian's Negligence—Pedestrian Crossing Places (Traffic) Provisional Regulations, 1935, Regs. 3, 4, 5.

Appeal from Hilbery, J. (82 Sol. J. 396).

In 1937, the plaintiff, a boy of fifteen years, was crossing Fleet Street, London, immediately to the west of the road junction at Ludgate Circus, on the southern half of a pedestrian crossing. There was an island in the middle of the roadway. There were traffic lights in the usual places (i.e., controlling traffic on the north side of Fleet Street entering Ludgate Circus from the west and on the south side of Ludgate Hill entering it from the east). An omnibus, which had crossed Ludgate Circus from Ludgate Hill, struck and injured the plaintiff. There was evidence that he had dashed off the pavement, tried to beat the omnibus across the pedestrian crossing, realised he was too late, tried to jump back and fallen. By reg. 3 of the Pedestrian Crossing Plans (Traffic) Provisional Regulations, 1935: "The driver of every vehicle at or approaching a crossing shall, unless he sees that there is no foot passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing." By reg. 4: "The driver of every vehicle at or approaching a crossing where traffic is not for the time being controlled by a police constable or by light signals, shall allow free and uninterrupted passage to any foot passenger who is on the carriageway at such crossing, and every such foot passenger shall have precedence over all vehicular traffic at such crossing." By reg. 5: "The driver of every vehicle at or approaching a crossing at a road intersection where traffic is for the time being controlled by a police constable or by light signals, shall allow free and uninterrupted passage to every foot passenger who has started to go over the crossing before the driver receives a signal that he may proceed over the crossing." Hilbery, J., awarded damages holding that at the moment the plaintiff stepped on to the crossing the omnibus was an approaching vehicle within reg. 3, and that the defendant Board were necessarily liable.

Scott, L.J., allowing the Board's appeal, said that the southern half of the crossing on which the plaintiff was crossing was not controlled by the police or by lights and so reg. 5 did not apply. Further, neither reg. 3 nor reg. 4 applied directly to the facts and nothing in *Bailey* v. *Geddes* [1938] 1 K.B. 156: 81 Sol. J. 684, bound the court to treat them as applying. Neither the regulations not the judgments in the case defined the duty of a pedestrian embarking on a crossing. His duty at that stage was left to the common law. He was entitled to assume (1) that approaching traffic was acting and would continue to act so as to be able to comply without difficulty with the directions of the regulations; and (2) that if any approaching vehicle was far enough away for it conveniently to check its speed he was entitled to cross. He had no right to embarrass a driver who was going at a reasonable speed. If he suddenly embarked on an empty crossing so as to embarrass a car which had come quite close and thereby caused or contributed to a collision he had only himself to blame, and the driver was under no liability to him. But it was not reasonable to keep pedestrians waiting for an indefinitely long stream of traffic and on a reasonable interval (e.g., 50 to 70 yards), a waiting pedestrian was entitled to cross. It was courteous and prudent to signal, but there was no legal duty to do so, since the driver of every car approaching a crossing when people were standing on the pavement was obliged to be prepared for their stepping on to the crossing and not to approach at a speed which would make it hard to pull up if they did step on to it when he was still a reasonable distance away. Here the boy's negligence was the sole cause of the accident. The appeal should be allowed with costs.

MacKinnon, L.J., agreed, and du Parcq, L.J., dissented.

Counsel: *Fox-Andrews; Glyn-Jones.*

Solicitors: *R. Macdonald; Gardiner & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Appeals from County Courts.

Kearry *v.* Pattinson.

Slesser, Clauson and Goddard, L.JJ. 20th December, 1938.

Animals—Bees in a Hive—Swarm—Going on to Another's Land—Property.

Appeal from Hull County Court.

The plaintiff kept bees. About noon on the 16th June, 1938, some of them swarmed settling in the next-door garden belonging to the defendant. The plaintiff never lost sight of them and could identify them. About 1 p.m. the plaintiff sought the defendant's permission to enter his land and recover them, but the parties having been unfriendly for some time, this was refused. About 10 a.m. next day the defendant told the plaintiff: "The bees are on the hedge in my garden close to the ground. You can get them by going across Mr. Fenton's field." The plaintiff did not ask Mr. Fenton's permission to cross his field, and partly through fear of trespassing and partly because he did not think he could get at the bees that way did not cross it. Shortly afterwards the defendant gave him permission to go on to his land, but the bees had gone. His Honour Judge Banks dismissed an action by the plaintiff for damages for loss of the swarm, holding that the mere refusal by the defendant of permission to go on to his land was not an actionable wrong.

Slesser, L.J., dismissing the plaintiff's appeal, said that the bees at the material time were not chattels and were nobody's property. Bees were *feræ naturæ*, but when they were hived a man could have a qualified property in them. Before they swarmed these bees were the plaintiff's property and remained so afterwards so long as they were in his sight and he had power to follow them (i.e., while they were in a place where it was lawful for him to follow them). He had no right to follow them on to another man's land. They could not be considered his or anyone else's property till they were hived again.

Clauson and Goddard, L.JJ., agreed.

Counsel: *Ralph Shove; Alastair Sharp.*

Solicitors: *Hamlins, Grammer & Hamlin; Smith & Hudson*, for *Richard Witty & Co.*, of Hull.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Farmer: Nightingale *v.* Whybrow.

Farwell, J. 17th November, 1938.

Administration—Bequest of Annuity—Fund to be Appropriated—Right to Resort to Capital—Gift Over of Appropriated Fund Subject to Payment of Annuity—Deficiency—Capital Value of Annuity—Destination.

A testatrix who died in 1937 by her will bequeathed several pecuniary legacies amounting to £3,850, including a settled legacy of £250. By cl. 5 she bequeathed a life annuity of £300 to M.W., directing her trustees to set apart and invest a sum, the income whereof would be sufficient at the time to pay it, and to pay it accordingly, with power to resort to the capital of the appropriated fund whenever the income should be insufficient. She further provided, by cl. 5 (3): "Subject to the payment of the said annuity the appropriated fund or so much thereof as shall not be resorted to to make up the deficiency of the income shall be held by my trustees upon trust for" D.M., B.F., V.C. and L.H. By cl. 7 the testatrix

bequeathed the residue of her real and personal estate to L.H. The amount available to provide for the pecuniary legacies was about £8,706. The duty on the legacies of £3,850 in all was £355. The sum required to provide for the annuity by its income was about £9,000. The capital value of the annuity was about £2,200, legacy duty being about £220. The question arose whether M.W. should be treated as a pecuniary legatee of a legacy equal to the capital value of the annuity or whether that sum should be set aside as a fund out of which she was entitled to receive her annuity.

FARWELL, J., said that the estate was insufficient to pay all the legacies and the annuity in full. In those circumstances there would in the ordinary case be no doubt that its actuarial value would have to be ascertained and that the annuitant would take its capital value abated, if necessary, with the other legacies. But if that method were adopted here the persons ultimately interested in the fund directed to be set aside would not get it. In the case of *In re Nicholson; Chadwyck-Healey* v. *Crawford*, 82 SOL. J. 624, the judgment was based on the view that the annuitant and the persons who were to take the appropriated fund after her were equally interested in it so that the court was no more entitled to destroy the rights of the one rather than those of the others. But here everything given to those who might take after the annuitant's death was "subject to the payment of the said annuity," i.e., satisfying it in full. The annuitant was entitled to have the capital value of the annuity paid over to her. His lordship further held that the surplus remaining on the adoption of this method should go to the persons named in cl. 5 (3).

COUNSEL: *M. Adams; G. P. Slade; Winterbotham; R. Edwards; William Cook.*

SOLICITORS: *Frank Taylor & Nightingale; Rye & Eyre.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Chappell *v.* Chappell.

Henn Collins, J. 19th October, 1938.

DIVORCE—DECREE ABSOLUTE—APPLICATION BY RESPONDENT HUSBAND—NON-COMPLIANCE WITH ORDERS FOR ALIMONY AND COSTS—RESPONDENT IN CONTEMPT—DISCRETION—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 and 1 Geo. 6), c. 57, s. 9, sub-s. (3).

This was an application by a husband respondent to make absolute a decree *nisi* of divorce granted to the wife petitioner on 14th October, 1937. The petitioner was entitled to apply for decree absolute on or about 14th April, 1938, but had not applied. Counsel on behalf of the applicant submitted that the petitioner not having applied, a *prima facie* case for the granting of the application had been made out by virtue of s. 9 of the Matrimonial Causes Act, 1937, which provided as follows: "Section 183 of the principal Act shall be amended by adding thereto a sub-section as follows: '(3) Where a decree *nisi* has been obtained, whether before or after the passing of this Act, and no application for the decree to be made absolute has been made by the party who obtained the decree, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom the decree *nisi* has been granted shall be at liberty to apply to the court and the court shall, on such application, have power to make the decree absolute, reverse the decree *nisi*, require further inquiry or otherwise deal with the case as the court thinks fit.'" The respondent wished to marry the woman named in the petition, with whom he was living, and of whom he expected a child to be born, of which he would be the father. Counsel on behalf of the petitioner stated that the wife's attitude was entirely contingent on some sort of improvement, on the husband's part, towards the children of the marriage. He was in very grave contempt in the matter of alimony, the whole of which had been ordered for the benefit of those children, and the husband further had not paid any of the costs of the suit. It was the established practice of the Divorce Court that anyone who had not obeyed the order of the court to pay costs should not be allowed to take any further step in the suit. This principle had been extended to cover alimony as well as costs. Before the court could accede to the husband's application, it had to be satisfied that there was some impropriety on the part of the wife in not proceeding to have the decree made absolute, and that the wife was holding it up for some improper motive, such as the obtaining of some advantage which she ought not to have. It could not be said that the wife was acting wrongly in taking the course which she had taken. In proper conditions, she would like her freedom, but not upon the basis that her husband who had very definite obligations to existing children should be able to go, and, by operation of law have another wife, and possibly other children. The preamble to the Matrimonial Causes Act, 1937, referred to the protection of children of the marriage. The talk of legitimising the child mentioned was the purest sentimentality, and the ideas underlying it were contrary to justice. [Counsel referred to *Kemp-Welch* v. *Kemp-Welch and Crymes* [1910] P. 233; *P.* v. *P. & T.* (1910), 26 T.L.R. 607; *Leavis* v. *Leavis* [1921] P. 299 and *Gower* v. *Gower* [1938] P. 106; 82 SOL. J. 336.] Counsel, in reply, submitted that the husband's non-compliance with the order of the court for payment was not wilful or wicked, but was due to his real inability to pay. The objects of the 1937 Act, as expressed in the preamble, would be met in the main, if the application were granted. One object was the removal of hardship, and it was certain that, if the present decree were not made absolute, hardship would fall upon the woman who was expecting a child. The husband had shown that he was intending to continue living with the woman named, and it was, therefore, also in the interests of public policy that his present marriage tie should be dissolved.

HENN COLLINS, J.: This is a motion by the respondent in the suit, the husband, who, as a result of the suit, was found guilty of an adulterous association which began somewhere in November, 1936. His application is under the Matrimonial Causes Act, 1937, s. 9, to have the decree *nisi* made absolute. I think that it is abundantly clear that any remedy open to a party under that section is not as of right, without regard to discretionary matters, but one in which the section clearly lodges in the court a discretion which it can exercise in the circumstances set out in the section. As I see this case, there are two questions which I have to answer. First of all, the respondent husband, the applicant on the motion, being admittedly in contempt of court, is that contempt of such a nature as to debar him from the exercise of discretion? Assuming that the answer to that question is that he is not debarred, the next question is whether or not the circumstances of the case are such that the discretion vested in the court should be exercised in his favour. I am satisfied on the facts of this case that this respondent has treated his legal obligations with contempt. He has preferred what he calls his moral obligations, although I can conceive of their being described by another term, to those which he undertook when he married the petitioner. I suppose that the force of the case in his favour is the suggestion or the fact that the woman with whom he has been living is expecting to be delivered of a child some time in March, 1939. Accepting that for the moment—which is not verified by medical evidence—assuming it to be the case, that child must have been conceived somewhere about the middle of this year. If he found two establishments too expensive, why did he indulge, and add to his expenses? If, indeed, as is suggested, he is unable to meet the order of the court against him, he would have been much better advised to expend the money which it has cost him to take these proceedings in reducing his legal liabilities. The true fact is, to my belief, that he

does not want to honour his legal obligations, but prefers those which he describes as his moral obligations. In those circumstances, I think that he is in contempt in the sense which, I will not say in all cases, or even in this, debars me from passing to the other considerations which might lead me to think that I ought to exercise discretion in his favour. However, I am quite clear that it is a case in which I ought not to exercise my discretion. The result is that he gets nothing by his motion, which will be dismissed with costs.

Motion dismissed with costs.

COUNSEL: *Graham Brooks*, for the respondent applicant: *Roland Adams*, for the petitioner.

SOLICITORS: *Kimbers, Williams, Sweetland & Stinson*, for the applicant; *Ernest A. Kite*, for the petitioner.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Randall *v.* Randall.

Sir Boyd Merriman, P. 6th December, 1938.

DIVORCE—INSANITY—RECEIVER ACTING AS GUARDIAN *ad litem*—COMMUNICATION OF PETITION TO PATIENT—DEGREE OF INSANITY—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 176 (*d*), AS AMENDED BY MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), ss. 2 and 3—MATRIMONIAL CAUSES RULES, 1937, r. 64.

This was a wife's suit for dissolution of marriage on the ground that the respondent was incurably of unsound mind and had been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition.

Sir BOYD MERRIMAN, P., in giving judgment, said that the respondent was suffering from a defect of the mind which, at present at any rate, was manifested by and consisted of an absence of will-power. He could talk perfectly sensibly. He could discuss subjects perfectly sensibly. He had no delusions now of any sort. The President, in dealing with the evidence, on which he found incurable unsoundness of mind, said that once he had arrived at a decision that there was unsoundness of mind and that it was incurable within the meaning of the statute, he was not concerned with the question of the degree of unsoundness of mind, except in so far as it was tested by the statutory test, viz., that there had been care and detention for the statutory period. Two things had caused him (his lordship) the greatest anxiety. First, that the receiver, who was appointed guardian *ad litem* had completely failed to realise that his duties as guardian *ad litem* were entirely separate from his duties as receiver. In fact, he had taken no sort of part in deciding whether the petition should be defended. He had merely taken what he called instructions from the solicitors who were representing him as receiver. The other matter was that it had been decided that the respondent should not be informed of the proceedings. The person who had made the latter decision was a layman in charge of a licensed house where the respondent was detained. Rule 64 of the Matrimonial Causes Rules, 1937, which laid down that a person in charge of a person of unsound mind on medical advice need not inform the patient of the fact that a petition had been presented against him, was not intended for a case where the patient could appreciate perfectly what was going on. For that reason he (his lordship) had ordered an adjournment, in order that he might have an independent medical opinion, and Dr. Bernard Hart, the specialist who had visited the patient at his instance, informed the patient, quite rightly, that a divorce suit was pending. It was the duty of a guardian *ad litem* to see that every proper and legitimate step for the patient's representation was taken, and that the patient's case was fully presented to the court. As to the advisability of appointing as guardians *ad litem* receivers (other than the Official Receiver), the matter had come before the court generally in connection with patients in public institutions, and as to whom it had been suggested that the accountant to the authority, or someone in a similar capacity, should act. He (his lordship) had made it clear that the court would not approve of that suggestion. It had become an established practice that if no person connected with the patient were available to act as guardian *ad litem*, then the Official Solicitor himself undertook that function. Certainly there were most important questions to be decided as to the financial arrangements to be made by a petitioner on behalf of an insane person, who was being divorced, and on that aspect of the matter no one was better qualified than an accountant to a public authority or a receiver in a private case. But before that point was reached, there was the more important question whether the case was proved against the respondent, who was handicapped by the fact that he or she was in detention. It was very desirable that the financial aspect of the matter should not necessarily be uppermost when the guardian *ad litem* had to take responsibility on the very important issue of whether insanity was proved. The Administration and Management Department were taking a similar line with regard to the appointment of receivers as guardians *ad litem*. In the Divorce Court, whenever possible, a person independent of the mere receivership of the estate should be appointed guardian *ad litem*, if such person were available. The present case had shown conclusively how necessary it was to keep the functions of guardian *ad litem* and receiver completely distinct. Decree *nisi*.

COUNSEL: *S. E. Karminski*, for the petitioner; *R. H. Bayford*, for the respondent.

SOLICITORS: *Taylor, Willcocks & Co.; Field, Roscoe & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Land and Estate Topics.

By J. A. MORAN.

MANY of the leading auctioneering firms have completed their annual reports for the present year, and most of them are tuned to an optimistic key. There is no doubt it has been a good year in the market, both public and private, for real estate. The international situation, and the crisis it involved, had a bad effect in other directions, but where land and bricks and mortar were concerned, the general uneasiness led investors to turn in their direction.

To attempt to give a definite comparison between one year and another is futile: for while auction results are made public, wild horses will not drag from the owners or the buyers what the price was in a private transaction.

The recent death of Lord North, soon after the demise of his father, will mean the payment of a second lot of death duties in six years. Few landed estates nowadays can withstand such a blow.

One of the most striking examples of the effect of heavy death duties during recent years, was the case of Lord Chichester's estates. The sixth earl died on 14th November, 1926. His eldest son died eight days later. Thus, the present peer found himself the heir to an agricultural estate in Sussex, with two doses of death duties to pay.

So "Folly Farm," where, for half a century, children from the congested districts of Islington and St. Pancras have found a congenial and recreative centre, is to be swallowed up by twelve hundred houses. The local council has been pressed to have the area scheduled as not for building, but nothing was done. It would have been a welcome addition to the "Green Belt." The farm is associated with Dick Turpin; and on its western side, stood the old house described by Miss Braddon in "Lady Audley's Secret."

Planning and design have been largely left to speculative builders and the speculators who finance them. The land speculator has bought the land at a high price, and, naturally, wants to make a good profit out of it. The land is divided up

into the maximum number of eligible plots, without any regard for trees, hedges or other amenities which are sold to the speculative builder who submits the lowest standard of design that will pass the estate owner's agent. It is true that town planning controls the number of houses to the acre, and has a slender hold on exterior design; but only the very worst are ever rejected. The designs of the houses may not be too bad in themselves, but entirely incongruous to the rest of the estate. In fact, the builder who advertises "no two houses alike" is no worse than the fellow responsible for the drab similarity of others. All along the line, architects are not given an opportunity of showing their ability in making these dull and drab estates a credit to their district.

The Minister of Health, after consultation with the Commissioner of Works, has approved an order made by the Town Council of Slough under s. 17 of the Town and Country Planning Act, 1932, for the preservation of the seventeenth century building, Bayliss House, Stoke Poges Lane, Slough. The effect of the order will be that the building cannot be demolished without the council's consent.

Bayliss House was formerly the residence of Doctor Godolphin, Headmaster of Eton. It was erected about 1685, and is an example of pure seventeenth century domestic architecture. At one period it is reputed to have been occupied by Lord Chesterfield, and some of the famous "Letters to his son" were probably written there. In 1829 it became a well-known Roman Catholic boys' school, and was continued as such until 1907. Cardinal Merry del Val, the famous Papal Secretary of State was educated there.

The disfigurement of the countryside receives a lot of attention in the newspapers, but, as a rule, there is little to show for it. In the United States, however, there appears to be more determination to cope with the evil. A recent decision of the Massachusetts Supreme Court has ruled that hoardings may be prohibited even on private property if they disfigure the scenery or mar the traveller's view. A law of the same State also stipulates that they must be set back at least 100 feet from the highway.

In recent years, one heard much of the "unwanted mansion," but of late this "black sheep" of the real estate family appears to be coming into its own. Some of them are being bought for speculative purposes, but others are purchased for actual possession, the new owner being willing to spend money on bringing them up to date. Hornby Castle, for instance, after being in the market for a long while, has just been sold, and saved from demolition.

The Read Hall Estate, near Bromley, is another example. It was put up to auction and withdrawn, but soon afterwards, was acquired privately by Mr. Samuel Holden, of Nelson. The Hall is a fine old Georgian residence, and the estate of 300 acres, is mostly well-timbered park land. The new owner is a prominent local millowner, and it is understood that his daughter will take up her residence there in the new year.

Societies.

The Law Society.

School of Law.

Copies of the annual prospectus for the session 1938/39 and of the detailed time-table for the Spring Term, 1939, can be obtained on application to the Principal's Secretary.

The Principal (Dr. G. R. Y. Radcliffe) will be in his room to advise students on their work on Friday, 6th January, from 10.30 a.m. to 12.30 p.m., and from 2 p.m. to 4.30 p.m.

The first lectures will be held on 9th January.

For Intermediate students there will be courses on (i) Public Law: The Courts of Justice, (ii) The Law of Property in Land (Part II), (iii) The Law of Tort, (iv) Elementary Equity, (v) Accounts and Book-keeping, and (vi) Trust Accounts.

Intermediate students must notify the Principal's Secretary not later than 6th January on the entry form whether they wish to take morning or afternoon courses.

The Final subjects on the time-table for the Spring Term are (i) Wills, Intestate Succession, Administration of Assets, Procedure and Practice of Probate Court, and Death Duties, (ii) Criminal Law and Procedure, Proceedings before Magistrates, and (iii) Sale of Goods and Bailments. Teaching will also be provided during the term in three optional subjects for the Final Examination, viz., (i) The Law of Shipping (Part II), (ii) Local Government and Administrative Law (Part I), and (iii) Divorce.

There will also be courses on (i) Conveyancing, (ii) Tort, (iii) Private International Law, and (iv) Jurisprudence (Part II) for Honours and Final LL.B. students; and on (i) English Constitutional Law and History (Part I) and (ii) Roman Law (Part II) for Intermediate LL.B. students.

Copies of the regulations governing the three studentships of £40 a year each, offered by the Council for award in July, 1939, can be obtained on application to the Principal's Secretary.

Solicitors' Managing Clerks' Association.

Land Registration.

Mr. Justice Clauson took the chair at a meeting of this Association held at Lincoln's Inn Old Hall on 25th November, and the Chief Land Registrar delivered a lecture on land registration. He began by rebutting the suggestion that the registry advocated registration of title on the ground that it enabled laymen to deal with registered land without employing solicitors. He constantly stressed in public the opinion that registration could not be satisfactorily conducted without solicitors. Laymen had the right to come to the registry direct, but it confined itself to its proper function and would not give advice or prepare applications. Curiously enough, while solicitors usually applauded the registry for this attitude, they did not always appreciate its refusal to act as counsel to themselves.

The Land Registry Act, 1862, had made the register a complete mirror of the title, in which every interest in the land, legal and equitable, was set out. The machinery was far too elaborate and the Act soon broke down. The Land Transfer Act, 1875, established the extraordinarily simple register of to-day, confined to freehold and leasehold interests. Its root characteristic was that the mere fact of registration conferred statutory powers on the registered proprietor to sell and charge the land—powers so potent that purchasers were not permitted by law to call for evidence of title outside or behind the register. The register was an impenetrable curtain behind which all dealings with equitable interests went on to the complete indifference of the purchaser. So happy and ingenious had been the idea of a curtain and a landowner with statutory powers of selling and charging, that the enemies of the system had, in 1925, stolen its thunder and applied the principle, by the Law of Property Act, to unregistered land. Perhaps solicitors were not as sure as they would like to be about the impenetrability of that curtain. The register was a completely non-transparent curtain, for equitable dealings did not appear in it.

The 1862 Act had required a rigid examination of title through the full statutory period of sixty years, and no discretion was left to the registrar. This was one of the reasons for its breakdown. The present standard for absolute title was that of a willing but prudent purchaser acting under competent advice. The amount paid out of the insurance fund by way of indemnity for error had been under £2,000, a proof of the businesslike attitude of the registry and of the skill and integrity of conveyancers.

In 1857 the Royal Commission on Registration had published the wise words, "A map is a good servant but a bad master; very useful as an auxiliary but very mischievous if made indispensable." The 1862 Act had, however, prescribed a meticulously accurate plan and a procedure which forced every applicant for registration and his neighbours to fight for their rights to the last inch, because when the map was settled they could no longer be heard. Title was now registered on general boundaries only: the plan was a guarantee signpost pointing to the ground and enabling the precise parcel to be readily identified as a whole, but leaving the exact line of the boundary undetermined. To ascertain the precise legal boundary-line the land must be visited and exhaustive inquiries must be made, but these steps, and the settlement of disputes, were outside the jurisdiction of the Land Registration Act. The rules allowed the Chief Land Registrar to define fixed boundaries if the proprietor cared to pay the practically prohibitive charges involved, but applications were very rare.

Overriding interests were the great stumbling block to registration of title. The Royal Commission of 1857 had decided, and the wisdom of their decision had never been challenged, that registration should make changes in the

machinery of conveyancing only. They had rejected the alternative of introducing changes in substantive law affecting registered and not unregistered land. They had adopted the root principle that the register should be nothing more than a substitute for the title deeds, showing nothing that was not shown on them. Such incidents as rights of way or adverse possession had therefore continued to affect the title to registered land. Inquiries which had to be made outside the title deeds had also to be made outside the register. The land certificate contained a clear warning that intending purchasers should inspect the land to ascertain whether any such overriding interests existed. Overriding interests were found throughout the world wherever there was a system of registration of title.

The Chief Registrar spoke strongly on the futility of personal search. It took up time, the clerk was only allowed to make pencilled notes, the firm was responsible for loss due to an error, and the search gave no priority. Moreover, it might miss pending dealings in the registry not yet entered on the register, as in such cases the register was not in the search room, and might even be physically dismembered and in process of being recreated, because of prior transfers of part. Solicitors should make use, he said, of the official search, which eliminated all these disadvantages and risks, exempted solicitors from responsibility for error, gave priority to the contemplated dealing, and was conducted free on the day of application. The difficulty of the dismemberment of documents was overcome by the provision of photostatic copies, which were admissible in evidence. The practice of printing copies of the land certificate of building estates as issued at the time of first registration was highly undesirable. It overlooked the fact that each transfer of part changed the vendor's title, and that any transfer might involve the opening of a new edition of the register because of restrictive covenants or rights of way which affected the land remaining unsold.

The whole business of registration could be conducted by post and there was no need for personal attendance at any stage. The prints of the forms issued by the registry were all carefully drafted so as to ensure that, when they were filled up, the registry would have all the information it normally required to complete the registration without having to raise any further questions. Solicitors who complied strictly with the forms would be saved time and trouble. The registry were always greatly indebted for constructive criticism of the service. In conclusion, the Registrar said that compulsory registration would increase and not diminish the practices of solicitors, for by diminishing the cost of dealing with land it increased the attractiveness of land for the small investor. In Australia it had increased sales of land by 60 per cent., and had raised the value of land by anything from 10 to 20 per cent.

The Medico-Legal Society.

THE PSYCHIATRIST IN THE COURTS.

The Medico-Legal Society and the Psychiatry Section of the Royal Society of Medicine held a joint meeting on 24th November to discuss the place of the psychiatrist in the administration of the criminal law. His Honour Judge W. G. Earengey, K.C., took the chair.

Dr. R. D. Gillespie said that the chief defect in the legal procedure was its lack of concern with the prisoner's character and state of mind. He pleaded for a research department as a necessary part of the legal system, so that the results of various kinds of sentences and treatments could be assessed statistically. Many prisoners had histories so like those of the majority of neurotics that constant co-operation between the magistrate and the psychiatrist might well result in the prevention of much crime. A routine psychiatrical report might be of doubtful use unless the judicature as a whole received some instruction in the principles of psychiatry. The psychiatrist should also be employed to advise on the occupation and after-care of prisoners. So long as the fantastic McNaghten rules remained in force, psychiatrists should interpret them literally. It was, however, probably rare that there was any fundamental difference of opinion between the psychiatrist who appeared for the prisoner and the prison medical officer who appeared for the Crown. A joint report should often be possible. The law should recognise the fact that the dividing line between sanity and insanity was not sharp and that there were degrees and varieties of responsibility.

Mr. Roland Burrows, K.C., upheld the McNaghten rules, and complained that medical men were inclined to underrate the responsibility of mentally disordered persons. When a prisoner was in custody, inquiries ought to be strictly limited to his fitness to plead and his responsibility. If there were a doubt about the prisoner's sanity the judge could postpone sentence (except in a capital case), and assistance from a medical witness was of great use to him. The medical report was frequently lacking, and merely stated that the prisoner was of low mental stature but not certifiable or mentally defective. The vast majority of offenders were ordinary individuals, for most of the abnormals had been dealt with before sentence. Apart from lunacy and mental deficiency, compulsory treatment would be useless, for the co-operation of the offender was necessary.

A paper by Dr. Denis Carroll was read, in which he stressed the development of the psychiatrist from being a mere alienist to being an adviser of the court on the disposal of a prisoner. It was not the function of the psychiatrist to determine whether punishment should be inflicted, but he might have information which would materially affect the magistrate's view on the value of punishment for a particular offender. The modern psychiatrist did not regard crime as a disease, or punishment as wrong. He only implied that some criminals, especially young ones, were amenable to psychiatric treatment, and that with some of these the interests of society were best served by carrying out that treatment.

Dr. Letitia Fairfield said that the only reason why the McNaghten rules continued to exist was that no one really paid any attention to them. In practice, no murderer whose sanity was in grave doubt had been hanged for many years. Judges managed to reconcile the fact that mental disease was in practice regarded as a reasonable and proper excuse for exemption from capital punishment, with these rigid and inadequate rules. The psychiatrist could give indispensable advice on the responsibility and treatment of persons of abnormal or perverted mentality who were not certifiable. The lawyer naturally desired to be master in his own house, but he had only been made master because society regarded him as the most effective guardian of the liberties of the individual. The psychiatrist who was acting as the servant of the court had an advantage over the expert witness, for he could give a really impartial opinion and do away with the notion that the doctor was the sort of person who only came into court to try to get the prisoner off. Students of medicine and law should be instructed together in the principles of psychiatry.

Dr. Crichton-Miller said that as long as lawyers regarded the McNaghten rules and bodily disease as the sole criterion of criminal responsibility, doctors were helpless. It should be possible for a conjunction to take place between the Bench and the psychiatrist as an assessor so that the difficult balance between responsibility and reformability on the one hand, and the safety of society on the other, might be reached.

Parliamentary News.

Progress of Bills.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 22nd December:—

Aberdeen Corporation (General Powers) Order Confirmation.
Expiring Laws Continuance.
Glasgow Corporation Order Confirmation.
Housing (Financial Provisions) (Scotland).
Ministry of Health Provisional Order Confirmation (Mid-Staffordshire Joint Hospital District).
National Trust for Scotland Order Confirmation.
Paisley Corporation (Cart Navigation) Order Confirmation.
Public Works Loans.

House of Lords.

Custody of Children (Scotland) Bill.
Read First Time. [22nd December.

House of Commons.

Census of Production Bill.
Read First Time. [21st December.
Limitation Bill.
Read First Time. [21st December.
Marriage (Scotland) Bill.
Read First Time. [21st December.
Public Trustee (General Deposit Fund) Bill.
Read First Time. [21st December.

Questions to Ministers.

KING'S BENCH DIVISION (TRIALS OVERDUE).

Mr. LIDDALL asked the Attorney-General whether he is aware that the number of cases overdue for trial in the King's Bench Division, notwithstanding the efforts of two extra Lords Justices, constitutes a denial of justice; and will he, as present arrangements have failed, terminate within the next three months the existing methods which give rise to confusion and delay and the waste of time and money of every person concerned.

THE ATTORNEY-GENERAL: As my hon. Friend is no doubt aware, it is proposed, as soon as opportunity permits, to submit to both Houses of Parliament a resolution authorising the appointment of two additional Judges to the King's Bench Division. In addition, it is hoped to arrange that, shortly after the beginning of next term, the Division should have the assistance of three Lords Justices. [21st December.

JAMAICA (SUPREME COURT).

Sir PERCY HURD asked the Secretary of State for the Colonies what steps are being taken to carry out the reconstitution of the Supreme Court of Judicature of Jamaica following upon the memorial of the Jamaica Law Society.

Mr. M. MACDONALD: As I informed my hon. Friend on 25th May, the reconstitution of the Supreme Court on the lines suggested by the Jamaica Law Society has been approved. The necessary legislation, which has been delayed owing to the pre-occupation of the Colonial Government with other urgent matters, will be introduced in the Spring Session. [21st December.

Rules and Orders.

REGISTRATION OF TITLE TO LAND IN CROYDON.

AT THE COURT AT BUCKINGHAM PALACE
The 20th day of December, 1938
Present
THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

Pursuant to section 120 of the Land Registration Act, 1925, His Majesty by and with the advice of His Most Honourable Privy Council is pleased to order and declare, and it is hereby ordered and declared, as follows:—

Registration of title to land is to be compulsory on sale in the County Borough of Croydon on and after the first day of January, nineteen hundred and thirty-nine.

Rupert B. Howorth.

Chancery Chambers.

From the 1st January, 1939, the business in these Chambers will be dealt with as below: The Chief Master (Master HOLLAND, Room 173) will be attached to all the Judges and will deal with the following:—

(A) All Applications made under the Adoption of Children Act, 1926.

(B) All Applications as to removals and appeals from the County Court under s. 10 of the Guardianship of Infants Act, 1886.

(C) Applications for transfer of causes or matters from one Judge of the Chancery Division to another under Ord. 49, r. 1A.

GROUP A.

Chambers of Mr. Justice BENNETT and Mr. Justice SIMONDS.
Master HOLLOWAY (Room 154).

A-D (1) All matters assigned to either of the above Judges or their successors on or after the 1st January, 1939.
(2) All matters assigned to Mr. Justice Bennett, Mr. Justice Crossman or Mr. Justice Simonds or their predecessors from 1st January, 1928 to 31st December, 1938.
A–F All matters assigned to Mr. Justice Eve, and Mr. Justice Romer or their predecessors prior to 1st January, 1928.

Master WILLMOTT (Room 237).

E-K (1) All matters assigned to either of the above Judges or their successors on or after the 1st January, 1939.
(2) All matters assigned to Mr. Justice Bennett, Mr. Justice Crossman, or Mr. Justice Simonds or their predecessors from 1st January, 1928 to 31st December, 1938.
G–N All matters assigned to Mr. Justice Eve, or Mr. Justice Romer or their predecessors prior to 1st January, 1928.
G–K All matters assigned to Mr. Justice Russell or his predecessors prior to 1st January, 1928.

Master H. W. JELF (Room 157).

L-R (1) All matters assigned to either of the above Judges or their successors on or after the 1st January, 1939.
(2) All matters assigned to Mr. Justice Bennett, Mr. Justice Crossman, or Mr. Justice Simonds or their predecessors from 1st January, 1928 to 31st December, 1938.
O–Z All matters assigned to Mr. Justice Russell, and Mr. Justice Tomlin or their predecessors prior to 1st January, 1928.
L–N All matters assigned to Mr. Justice Russell or his predecessors prior to 1st January, 1928.

Master TREHEARNE (Room 246).

S-Z (1) All matters assigned to either of the above Judges or their successors on or after the 1st January, 1939.
(2) All matters assigned to Mr. Justice Bennett, Mr. Justice Crossman or Mr. Justice Simonds or their predecessors from 1st January, 1928 to 31st December, 1938.
O–Z All matters assigned to Mr. Justice Eve, and Mr. Justice Romer or their predecessors prior to 1st January, 1928.

GROUP B.

Chambers of Mr. Justice CROSSMAN and Mr. Justice MORTON.

Master NEWMAN (Room 162).

A-D (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.
(2) All matters assigned to Mr. Justice Luxmoore, Mr. Justice Farwell or Mr. Justice Morton or their predecessors from 1st January, 1928, to 31st December, 1938.
A–F All matters assigned to Mr. Justice Astbury or Mr. Justice Clauson or their predecessors prior to 1st January, 1928.

Master HOLLAND (Room 173).

E-K (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.
(2) All matters assigned to Mr. Justice Luxmoore, Mr. Justice Farwell, or Mr. Justice Morton or their predecessors from 1st January, 1928 to 31st December, 1938.
G–N All matters assigned to Mr. Justice Astbury and Mr. Justice Clauson or their predecessors prior to 1st January, 1928.
G–K All matters assigned to Mr. Justice Tomlin or his predecessors prior to 1st January, 1928.

Master HAWKINS (Room 168).

L-R (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.
(2) All matters assigned to Mr. Justice Luxmoore, Mr. Justice Farwell, or Mr. Justice Morton or their predecessors from 1st January, 1928 to 31st December, 1938.
A–F All matters assigned to Mr. Justice Russell or Mr. Justice Tomlin or their predecessors prior to 1st January, 1928.
L–N All matters assigned to Mr. Justice Tomlin or his predecessors prior to 1st January, 1928.

Master MOSSE (Room 163).

S-Z (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.
(2) All matters assigned to Mr. Justice Luxmoore, Mr. Justice Farwell, or Mr. Justice Morton or their predecessors from 1st January, 1928 to 31st December, 1938.
O–Z All matters assigned to Mr. Justice Astbury or Mr. Justice Clauson or their predecessors prior to the 1st January, 1928.

By Order of the Judges of the Chancery Division.
19th December, 1938.

Legal Notes and News.

Honours and Appointments.

Mr. ROBERT S. ROBERTSON, K.C., of Toronto, one of the leaders of the Ontario Bar, has been appointed Chief Justice of the Supreme Court of Ontario in place of Mr. Justice Rowell, who has resigned on account of ill-health.

Mr. F. W. ROBERTS, solicitor, of North Shields, has been appointed Town Clerk of Nelson. Mr. Roberts was admitted a solicitor in 1935.

Professional Announcements.

(2s. per line.)

Messrs. INGRAM & Co., solicitors, of 45, Fore Street, London, E.C.2, have removed to Royal London House, 17, Finsbury Square, London, E.C.2.

Notes.

Mr. Frank Medlicott, solicitor, of Carey Street, W.C., has been recommended by the Joint Conservative and Liberal Executive Committee as the prospective National Liberal Government candidate in the forthcoming by-election in East Norfolk.

An agreement between Germany and Czecho-Slovakia has been signed in Berlin settling legal questions arising out of the cession of the Sudetenland. It arranges for the transfer to German Courts of cases pending before Czecho-Slovak Courts at the time of the cession.

Messrs. Jones, Lang & Co., Chartered Surveyors, Auctioneers and Estate Agents, announce that as from 1st January, 1939, their firm will be amalgamated with Messrs. Wootton & Son. The title of the new firm will be Messrs. Jones, Lang, Wootton & Sons. The practice will be carried on at 17, King Street, E.C.2, and at 51 and 53, South Audley Street, W.1.

A sessional evening meeting of the members of The Auctioneers' and Estate Agents' Institute will be held at 29, Lincoln's Inn Fields, W.C.2, on Thursday, 5th January, 1939, at 7 p.m., when Major F. C. Cook, C.B., D.S.O., M.C., M.Inst.C.E., F.S.I., Chief Engineer of the Ministry of Transport, will deliver a paper, in the form of a lantern lecture, entitled "The Evolution of the Road."

SOLICITORS' EXAMINATIONS IN SCOTLAND.

The professional examinations under the regulations prescribed by the General Council of Solicitors were held by the examiners in Edinburgh on 29th and 30th November and 2nd December.

For the First Professional Examination, Part I (Book-keeping and Accounting), which was also held in Glasgow, seventy-five candidates presented themselves, and fifty-one have received certificates of passing; for Part II of the First Professional Examination (Constitutional Law) one candidate presented himself and he has received a certificate of passing. For the Third Professional Examination, Part I (Scots Law and Mercantile Law), forty-eight candidates presented themselves; of these twenty have passed and received certificates. For the Third Professional Examination, Part II (Conveyancing and other specific subjects), twenty-eight candidates presented themselves; of these nineteen have passed and received certificates. Two of these candidates were graduates in law who completed their qualification.

Ten graduates in law, holding the degree of LL.B. or B.L., of the Scottish Universities, which exempted them from the examinations in law, have been reported by the examiners to the General Council as duly qualified to be admitted as solicitors.

RAILWAY ASSESSMENT AUTHORITY.

The Minister of Health has appointed the following to be members of the Railway Assessment Authority for the period 1st January, 1939, to 31st December, 1943:—

Mr. F. C. R. Douglas (L.C.C.).

Sir George Etherton, Clerk of Lancashire C.C. (County Councils Association).

Mr. G. Trevelyan Lee, formerly Town Clerk of Derby (Association of Municipal Corporations).

Mr. H. J. Beavis (Metropolitan Boroughs Standing Joint Committee).

Mr. J. A. Simpson, formerly Clerk of Woodford Green U.D.C. (Urban District Councils Association).

Mr. Neville Hobson, Clerk of Beverley R.D.C. (Rural District Councils Association).

Sir J. Curtis, formerly Clerk of the Birmingham Assessment Committee.

Mr. J. E. Tomley, Clerk of North Montgomeryshire and Clun Assessment Committees.

Mr. S. Lord, formerly Borough Treasurer of Acton.

The bodies mentioned in parentheses are the bodies by whom the respective members were recommended for appointment to the Minister. All except Mr. Douglas, Mr. Hobson, and Mr. Lord were previously members of the Authority. The Chairman (Sir Joshua Scholefield, K.C.) is appointed by the Lord Chancellor.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 12th January 1939.

	Div. Months.	Middle Price 28 Dec. 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	104¾xd	3 16 4	3 12 8
Consols 2½%	JAJO	70	3 11 5	—
War Loan 3½% 1952 or after ...	JD	97¾	3 11 7	—
Funding 4% Loan 1960-90	MN	107½	3 14 5	3 9 10
Funding 3% Loan 1959-69	AO	94½	3 3 6	3 5 10
Funding 2½% Loan 1952-57	JD	92½	2 19 6	3 6 2
Funding 2½% Loan 1956-61	AO	86¾	2 17 8	3 7 3
Victory 4% Loan Av. life 21 years ...	MS	107	3 14 9	3 10 6
Conversion 5% Loan 1944-64 ...	MN	109½	4 11 4	2 18 6
Conversion 3½% Loan 1961 or after	AO	98¼	3 11 3	—
Conversion 3% Loan 1948-53 ...	MS	98½	3 0 11	3 2 9
Conversion 2½% Loan 1944-49 ...	AO	95½	2 12 4	3 0 7
National Defence Loan 3% 1954-58	JJ	96	3 2 6	3 5 6
Local Loans 3% Stock 1912 or after	JAJO	83	3 12 3	—
Bank Stock	AO	329½	3 12 10	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	80	3 8 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	85	3 10 7	—
India 4½% 1950-55	MN	111	4 1 1	3 5 10
India 3½% 1931 or after	JAJO	89½	3 18 3	—
India 3% 1948 or after	JAJO	75¾	3 19 2	—
Sudan 4½% 1939-73 Av. life 27 years	FA	105	4 5 9	4 3 8
Sudan 4% 1974 Red. in part after 1950	MN	105½	3 15 10	3 8 8
Tanganyika 4% Guaranteed 1951-71	FA	106	3 15 6	3 7 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	102½	4 7 10	3 12 2
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	89½	2 15 10	3 6 5
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	97½	4 2 1	4 2 9
Australia (Commonw'th) 3% 1955-58	AO	82½	3 12 9	4 6 5
*Canada 4% 1953-58	MS	108½	3 13 9	3 5 5
*Natal 3% 1929-49	JJ	98	3 1 3	3 4 11
New South Wales 3½% 1930-50 ...	JJ	92	3 16 1	4 7 5
New Zealand 3% 1945	AO	87	3 9 0	5 8 5
Nigeria 4% 1963	AO	107½	3 14 5	3 10 10
Queensland 3½% 1950-70	JJ	90½	3 17 4	4 0 11
*South Africa 3½% 1953-73	JD	100½	3 9 8	3 9 1
Victoria 3½% 1929-49	AO	93½	3 14 10	4 5 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	83	3 12 3	—
Croydon 3% 1940-60	AO	93	3 4 6	3 9 6
*Essex County 3½% 1952-72 ...	JD	100	3 10 0	3 10 0
Leeds 3% 1927 or after	JJ	82	3 13 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	96½	3 12 6	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	68	3 13 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	81½	3 13 7	—
Manchester 3% 1941 or after ...	FA	83	3 12 3	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	94½	2 12 11	3 1 11
Metropolitan Water Board 3% "A" 1963-2003	AO	84	3 11 5	3 12 11
Do. do. 3% "B" 1934-2003 ...	MS	85	3 10 7	3 11 11
Do. do. 3% "E" 1953-73 ...	JJ	93½	3 4 2	3 6 3
*Middlesex County Council 4% 1952-72	MN	106	3 15 6	3 9 0
* Do. do. 4½% 1950-70	MN	110	4 1 10	3 9 4
Nottingham 3% Irredeemable ...	MN	82	3 13 2	—
Sheffield Corp. 3½% 1968	JJ	100xd	3 10 0	3 10 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	100½xd	3 19 7	—
Gt. Western Rly. 4½% Debenture ...	JJ	106½xd	4 4 6	—
Gt. Western Rly. 5% Debenture ...	JJ	119½xd	4 3 8	—
Gt. Western Rly. 5% Rent Charge ...	FA	115½xd	4 6 7	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	107½	4 13 0	—
Gt. Western Rly. 5% Preference ...	MA	81½	6 2 8	—
Southern Rly. 4% Debenture ...	JJ	99½	4 0 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	104½	3 16 7	3 14 2
Southern Rly. 5% Guaranteed ...	MA	114½	4 7 4	—
Southern Rly. 5% Preference ...	MA	91½	5 9 3	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.